DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429	
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, v. **Defendants:** GARY J. DRAGUL, BENJAMIN KAHN, THE CONUNDRUM GROUP, LLP, SUSAN MARKUSCH, ALAN C. FOX, ACF PROPERTY MANAGEMENT, INC., MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, INC., and JANE DOES 1-10, and XYZ CORPORATIONS 1-10.	▲COURT USE ONLY ▲
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DEFENDANTS ACF PROPERTY MANAGEMENT, INC. AND ALAN C. FOX'S MOTION TO DISMISS PURSUANT TO C.R.C.P. 12(b)(1), 12(b)(5), AND 9(b)	

Defendants ACF Property Management, Inc. and Alan C. Fox (collectively "ACF"), through counsel, hereby submit their Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1), 12(b)(5), and 9(b), and in support thereof state as follows:

C.R.C.P. 121 § 1-15, ¶ 8 CERTIFICATE OF CONFERRAL

Counsel for ACF certify they have conferred in good faith about this motion with counsel for Plaintiff Harvey Sender, as Receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC (collectively "GDA"), and, based thereon, advise the Court that the Receiver opposes the requested relief.

INTRODUCTION

On August 30, 2018, the Receiver was appointed in the civil enforcement action captioned *Gerald Rome v. Gary Dragul et al.*, Denver District Court case number 2018CV33011 ("Receivership Action"), brought against Dragul and GDA. ACF is not a party to the Receivership Action. ACF is, however, one of the largest creditors of the receivership estate ("Estate"), holding claims in the amount of over $6 million.

On January 21, 2020, almost eighteen months into his appointment and having nearly exhausted the assets of the Estate, the Receiver commenced this action, propagating his smear campaign against ACF and others with whom Dragul and GDA conducted business. ACF and the other Defendants filed motions to dismiss the original Complaint, detailing its fatal defects. Rather than respond to the various motions to dismiss, the Receiver filed his First Amended Complaint ("FAC"). But the Receiver's second bite at the apple fares no better than his first—the FAC suffers from the same fatal flaws as the original Complaint.

As a threshold matter, the Receiver seeks to improperly bring claims against ACF on behalf of Dragul's investors and creditors. The law is clear, however, that receivers stand in the shoes of the persons in receivership and can only assert claims on their behalf. Here, the only persons in receivership are Dragul and GDA. Standing in their shoes—and not those of investors or creditors—the Receiver lacks standing to bring any of the claims he asserts against ACF. This fundamental defect deprives the Court of subject matter jurisdiction over those claims and necessitates their dismissal pursuant to C.P.C.P. 12(b)(1).

Moreover, the Receiver once again fails to plead fraud with the particularity required under C.R.C.P 9(b). In fact, the Receiver purports to bring fraud claims on behalf of ***unidentified creditors***, who invested an ***unspecified amount***, at an ***unspecified time***, in an ***unspecified entity***, based on some ***unspecified misrepresentations or omissions***. The FAC contains one paragraph after another of immaterial and disjointed details, but still conspicuously omits the elemental "who, what, when, where, and how" of any alleged misrepresentation or omission by ACF. Indeed, the FAC epitomizes the "kitchen sink" approach to pleading, elaborating on matters that (i) the Receiver has no standing to assert; (ii) have nothing to do with the substantive claims, (iii) are actively being litigated in other forums, and/or (iv) are clearly time-barred. When stripped of untimely, impermissible, and conclusory allegations, the FAC fails to state a claim against ACF and must also be dismissed pursuant to C.R.C.P. 9(b) and 12(b)(5).

ALLEGATIONS OF THE FAC

The Receiver alleges that Dragul operated a Ponzi scheme through various special purpose entities ("SPEs") engaged in acquiring and managing commercial real estate, commingled investor funds, and diverted them to his personal accounts. FAC ¶¶ 35, 53. Aside from making conclusory

allegations, the Receiver does not allege ACF had any part in Dragul's financial management of his SPEs. Instead, the Receiver's claims against ACF are much more attenuated and largely concern alleged misrepresentations in communications that ACF distributed to its own investors, which sometimes included Dragul as a manager of a member entity.

While the Receiver purports to assert claims regarding unspecified fraudulent acts by unspecified Defendants spanning over 16 years concerning 26 different SPEs (*see id.* ¶¶ 294, 296–97), he provides only four potentially relevant "examples."[1] As detailed below, all four are emblematic of the Receiver's failure to plead with the requisite particularity when it comes to ACF. Rather, the Receiver relies on hyperbole and obfuscation to try and lump ACF into the more particularly alleged activity involving GDA.

1. Market at Southpark ("MSP")

In April 2009, Market at Southpark 09 LLC ("MSP LLC"), an entity managed by ACF, purchased a certain real property for $22,000,000. FAC ¶¶ 97–98. In January 2010, ACF sent solicitation materials to Dragul, reflecting a price for the SPE of $24,750,000. *Id.* ¶¶ 90-91. The Receiver alleges these statements were false because MSP LLC paid less to acquire the real property. *Id.* ¶¶ 92, 97–98. The Receiver alleges that "Dragul forwarded the Market at Southpark Solicitation Materials to [defendant Marlin] Hershey to distribute to prospective investors." *Id.* ¶¶ 92–93. GDA Market at Southpark, LLC ("GDA Market") acquired an interest in MSP LLC, but Dragul allegedly did not tell his investors that they were offered a membership interest in GDA Market and not in MSP LLC. *Id.* ¶¶ 102–03. On May 13, 2011, ACF sent a letter to the members

[1] In addition to the transactions discussed here, the FAC includes allegations discussing at length various other transactions that do not serve as the factual basis for any of the asserted claims.

of MSP LLC seeking approval to sell the property and roll over their investments into an exchange property. *Id.* ¶ 105. Dragul allegedly did not provide this letter to his investors. *Id.* ¶¶ 106–07.

MSP LLC sold the property in November 2011 for $30 million and, at closing, ACF and GDA were paid commissions. *Id.* ¶ 111. After the property was sold, ACF identified two exchange properties: Loggins Corner ("Loggins") and Tower Plaza ("Tower Plaza"). *Id.* ¶ 118. In February 2012, ACF sent solicitation materials to investors, including GDA Market, reflecting purchase prices of $7,187,500 and $18,250,000, respectively, for the two SPEs that would own Loggins and Tower Plaza. *Id.* ¶¶ 122, 127. The Receiver alleges these statements were false because the ACF SPEs paid less to acquire each property. *Id.*

The Receiver alleges that when Loggins was eventually sold in April 2018, Dragul did not inform his investors of the sale and misappropriated proceeds that ACF distributed to GDA Market. *Id.* ¶¶ 138–40. Other than alleging, in conclusory fashion, that ACF "knew" or "should have known" about Dragul's misconduct, the Receiver does not allege that ACF assisted Dragul or benefitted from his alleged misuse of funds. *See id.*

2. Plaza Mall of Georgia North

On December 24, 2008, Dragul's entity Plaza Mall North 08 B Junior LLC ("North 08 B") purchased a certain real property for $25,920,000. *Id.* ¶ 150. At closing, ACF and GDA were paid fees. *Id.* ¶ 153. Also in 2008, Dragul provided solicitation materials and financial projections to potential investors, where he represented the price to be $26,979,567. *Id.* ¶ 143–150. The Receiver does not allege ACF had any part in drafting or distributing the solicitation materials. Instead, Mr. Fox, through his irrevocable trust (the "Fox Trust"), allegedly invested $4,210,000 in Dragul's North 08 B. *Id.* ¶ 154. In April 2016, the Fox Trust sold its interest in North 08 B to a Dragul

LLC, for $3.8 million. *Id.* ¶ 157. Dragul received fees in connection with that transaction; no fees were paid to Mr. Fox, the Fox Trust, or ACF. *Id.* ¶ 158. While the Receiver alleges that Dragul subsequently misrepresented facts to his investors, the Receiver does not allege ACF made any misrepresentations or had any involvement in the property after its interest was sold.

3. Fort Collins

As of January 23, 2003, Dragul and ACF owned 51% and 49%, respectively, in Fort Collins WF 02, LLC ("FC WF"). *Id.* ¶ 163. FC WF owned a Whole Foods center, which it sold in May 2005. *Id.* ¶ 164. From May to August 2005, the proceeds from the sale were exchanged into three properties owned by ACF-managed SPEs: (1) Highlands Ranch Village II Center ("Highlands Ranch"), (2) Meadows Shopping Center ("Meadows"), and (3) Southwest Commons ("Southwest Commons"). *Id.* ¶ 164–65. The Receiver describes these transactions at length, even though they occurred years before any of Dragul's investors allegedly acquired any interest in FC WF. *See id.* ¶ 172. In each transaction, FC WF acquired a minority interest in the SPE that owned the property. *Id.* ¶¶ 166–70. And for each transaction, commissions were paid to GDA and/or ACF. *Id.*

At least three years after these transactions, from 2008-2009, Dragul and Hershey solicited investments in FC WF, allegedly making misleading and incomplete representations. *Id.* ¶¶ 172–76. The Receiver alleges that Dragul refused to let certain investors cash out their investments and diluted members' interests by selling additional interests after all the entity's equity had been sold. *Id*. ¶¶ 177–79. The Receiver further alleges that on November 20, 2011, ACF sold Highlands Ranch, without obtaining approval from Dragul's investors. *Id.* ¶¶ 181, 182.

On March 23, 2012, ACF provided an update to all its investors regarding two exchange properties to replace Highlands Ranch: Trophy Club ("Trophy Club") and Laveen Ranch

Marketplace ("Laveen Ranch"). *Id.* ¶ 190. Included in the letter were solicitation materials for both properties. *Id.* ¶ 191. The materials reflected purchase prices of $16.9 million and $4.5 million, respectively, for Trophy Club and Laveen Ranch. *Id.* ¶¶ 191–198. The Receiver alleges these statements were false, primarily because the relevant SPEs paid less to acquire each property. *Id.*

On September 13, 2018, ACF advised its investors that it had executed a contract to sell Laveen Ranch and sought approval to conduct an exchange. *Id.* ¶ 204. The Receiver alleges that ACF overstated the percent of membership interests that had been initially sold so that it could "represent an inflated return on the investment of 34%." *Id.* ¶ 205. The Receiver acknowledges that ACF enclosed ballots concerning the sale, but he nonetheless claims, "upon information and belief," that ACF did not receive approval from a majority of the investors. *Id.* ¶¶ 207, 211. This appears to be based entirely on the fact that the Receiver did not return a ballot despite being appointed two weeks prior to their distribution. *Id.* ¶¶ 208–10.

4. Prospect Square

In October 2007, Dragul purchased a shopping center known as Prospect Square for $16 million through five different SPEs ("Prospect SPEs"). *Id.* ¶¶ 216. The Receiver does not allege ACF had any involvement in this acquisition or in the solicitation of investments. *See id.* Nor does he allege that ACF received any commissions. *See id.* ¶ 221.

In January 2014, the Prospect SPEs filed for chapter 11 bankruptcy, and later sought the bankruptcy court's approval to sell Prospect Square to Park City Commercial Properties, LLC ("Park City") for $16.15 million. *Id.* ¶¶ 222–23. The managing member of Park City allegedly was Edward Delava, ACF's former CFO. *Id.* ¶ 225. The sale did not close, leading the lender to seek foreclosure. *Id.* ¶ 228. The Receiver alleges Dragul falsely represented to the bankruptcy court that

he had no knowledge of the anchor tenant's intentions to relocate, which caused the buyer to back out of the deal, and failed to disclose his prior relationship with the prospective buyer. *Id.* ¶¶ 229–33. The lender ultimately agreed to accept a discounted amount, and the Prospect SPEs obtained the court's approval to sell the property to an ACF entity for $12.2 million. *Id.* ¶¶ 235–36. The Receiver does not allege ACF received any commission. *See id.* ¶¶ 239–40.

In January 2016, the ACF entity that acquired Prospect Square sold the property to Dragul's SPE (PS 16, LLC) for $13.8 million. *Id.* ¶ 248. Dragul and other defendants received fees and commissions; no fees were paid to ACF. *Id.* ¶ 249. Following the acquisition of the property, Dragul allegedly solicited investments based on fraudulent representations, but the Receiver does not allege that ACF had any involvement in this property after selling its interest. *Id.* ¶¶ 251–58.

The Receiver also alleges in a conclusory manner that between 2002 and 2016, ACF received a total of $10,200,305 in commissions, all of which allegedly were undisclosed and illegal and were obtained from Dragul's investors by fraud. *Id.* at ¶ 297, Ex. 6 (amended).

LEGAL STANDARD

A party must have standing to assert claims, or the Court lacks jurisdiction to hear them and they must be dismissed pursuant to C.R.C.P. 12(b)(1). *Ferguson v. Spalding Rehabilitation, LLC*, 456 P.3d 59, 61 (Colo. App. 2019). "Standing is a threshold issue that must be satisfied before a case may be decided on the merits. To establish standing, a plaintiff must show that he has suffered an injury in fact to a legally protected interest." *Adams v. Land Services, Inc.*, 194 P.3d 429, 430 (Colo. App. 2008).

In evaluating a motion to dismiss under C.R.C.P. 12(b)(5), courts may consider only those matters stated in the complaint, all averments of material fact must be accepted as true, and the

allegations of the complaint must be viewed in the light most favorable to the plaintiff. *Coors Brewing Co. v. Floyd*, 978 P.2d 663, 665 (Colo. 1999). However, courts are "not required to accept as true legal conclusions couched as factual allegations, and a complaint properly may be dismissed if the substantive law does not support the claims asserted." *Vickery v. Evelyn V. Trumble Living Trust*, 277 P.3d 864, 869 (Colo. App. 2011). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (citations omitted).

ARGUMENT

1. The Receiver Lacks Standing to Bring the Claims Asserted Against ACF.

A receiver's function is to collect the assets of those in receivership, obey the court's order, and maintain and protect the property and the rights of the various parties. *Hart v. Ed-Ley Corp.*, 482 P.2d 421, 425 (Colo. App. 1971). A receiver "stand[s] in the shoes of the entity in receivership." *Wuliger v. Manufacturers Life Ins. Co.*, 567 F.3d 787, 793 (6th Cir. 2009) (citations omitted). Accordingly, a receiver "lack[s] standing to bring suit unless the receivership entity could have brought the same action." *Id.* (citation omitted). "[A]lthough the stated objective of a receivership may be to preserve the estate for the benefit of creditors, that does not equate to a grant of authority to pursue claims ***belonging to*** the creditors." *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 627 (6th Cir. 2003) (emphasis added). As one court put it, "the plaintiff in his capacity of receiver has no greater rights or powers than the corporation [in receivership] itself would have. A receiver may commence lawsuits, but stands in the shoes of the corporation and can assert only those claims which the corporation could have asserted." *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (citations omitted); *see also Fleming v. Lind–Waldock & Co.*, 922

F.2d 20, 25 (1st Cir. 1990) (equity receiver did not have standing to bring claims on behalf of investors); *Commodity Futures Trading Comm'n. v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1481 (10th Cir. 1983) (receiver can assert claims only for the corporate fund in receivership, and cannot seek "damages on the claims for the investors").

Here, the Receiver lacks standing to bring any of the claims asserted against ACF. He purports to bring the first through third claims on behalf of Dragul's investors and/or SPEs, which are described as "creditors of the Receivership Estate." FAC ¶¶ 315, 356, 361. The Receiver thus concedes these claims belong to creditors, which he therefore lacks standing to assert. *See Javitch*, 315 F.3d at 627. Nor ***could*** the Receiver bring these claims on behalf of Dragul or GDA. A claim for violations of the Colorado Securities Act can be asserted only by a purchaser or seller of a security, and Dragul/GDA are neither with respect to the securities at issue here. C.R.S. §§ 11-51-501(1), 11-51-604(1)–(4). And the claims for negligence and negligent misrepresentation are premised on a duty of care ACF allegedly owed "investors and prospective investors," not to Dragul or GDA. FAC ¶¶ 357, 366–69. Neither Dragul nor GDA therefore could assert the first through third claims for relief.

With respect to the fourth through sixth claims, in addition to "creditors of the Estate," the Receiver purports to bring them on behalf of the Estate and "GDA Entities." *Id.* ¶¶ 372, 379, 393. But his theory is incorrect because neither the Estate nor the "GDA Entities" can bring these claims. The Receiver implicitly concedes this in his fourth claim, for civil theft, by asserting injury only to the "GDA Entity investors." *Id.* at ¶ 377. And violations of COCCA and aiding and abetting can be asserted only by those injured by one or more predicate acts, (C.R.S. § 18–17–106(7)); in this case, Dragul's investors. In short, neither the Estate nor GDA can assert any of these claims.

The Receiver fails to allege even a basis for his purported standing to assert the eleventh and twelfth claims, for fraudulent transfer and unjust enrichment, respectively. Those claims likewise do not belong to Dragul or GDA, but exclusively to creditors. C.R.S. § 38-8-108(1) ("In an action for relief against a transfer or obligation under this article, ***a creditor*** . . . may obtain" relief (emphasis added)). Accordingly, courts have repeatedly held that receivers lack standing to bring such claims because a fraudulent transfer is ***valid as against the debtor***. *See Eberhard*, 530 F.3d at 132–35 (receiver lacked standing to assert fraudulent conveyance claim because he did not represent any creditors); *Troelstrup v. Index Futures Group, Inc.*, 130 F.3d 1274, 1275–77 (7th Cir. 1997) (receiver appointed for trader who allegedly defrauded investors lacked standing because the trader had no possible claim and the receiver had no standing to act on investors' behalf); *see also 2 Clark on Receivers* § 364 (3d ed. 1959) (a receiver "acquires no right ... to the property fraudulently transferred for the reason that the transfer is valid against the debtor and cannot be set aside by the receiver as the debtor's successor").

The Receiver may cite cases in which receivers did have standing to bring certain fraudulent transfer claims on behalf of entities in receivership. Such cases, however, are limited to circumstances where—***unlike here***—a distinct harm is clearly traceable to the entities in receivership. *See Scholes*, 56 F.3d 750, 753–54 (7th Cir. 1995) (receiver had standing to recover fraudulent transfers because the entity in receivership suffered distinct injury); *Wuliger*, 567 F.3d at 793–97 (because entities in receivership had been harmed, receiver had standing to bring claims); *Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir. 2008) (receiver could maintain claim for fraudulent transfer on behalf of entity in receivership because "the Receiver is in fact suing to redress injuries that [the entity] suffered when its managers caused [it] to commit waste and

fraud"); *Wing v. Hammons*, No. 2:08-CV-00620, 2009 WL 1362389, at *2–3 (D. Utah. May 14, 2009) (entities "injured" during Ponzi scheme, "now under the auspices of the Receiver, are entitled to seek the return of these fraudulently dissipated payments"). Importantly, these cases confirm that receivers ***do not*** stand in the shoes of creditors and cannot bring claims on their behalf. Instead, the receivers' standing in those cases arose from the distinct injury sustained by the entity in receivership.

No such injury to GDA is alleged here. The Receiver has not and cannot claim that GDA suffered any harm as a result of any alleged misrepresentation or undisclosed commissions. In fact, the Receiver claims GDA was a ***recipient*** of many of those commissions. *E.g.*, FAC ¶¶ 98, 111, 136, 153, 249, 299. While the Receiver may argue that GDA was ultimately harmed by Dragul's commingling and diversion of funds, he has no such argument as to ACF. *See id.* ¶¶ 53–77.

In *Knauer v. Jonathon Roberts Financial Group, Inc.*, 348 F.3d 230 (7th Cir. 2003), the court highlighted precisely why the Receiver has no standing to assert a fraudulent transfer claim against ACF. Noting that Ponzi schemes often consist of two distinct phases – the solicitation phase and the embezzlement phase – the *Knauer* court explained that no harm could come to the receivership entities from misrepresentations in the solicitation phase, even if the schemer obtained fees and salaries from the funds he solicited. That is because the sales only "fatten[ed] the companies' coffers." *Id.* at 233–234. The receivership entities, however, may be injured by the schemer's actions during the embezzlement phase because the schemer "depletes the Ponzi entity of resources, which are diverted to the entity's principal, the schemer." *Id.* The receiver in *Knauer* therefore had standing to bring claims to invalidate a fraudulent transfer in the embezzlement phase but ***not*** in the solicitation phase. *Id.* As noted above, there are no allegations that ACF was involved

in the financial management of GDA. The allegations against ACF, which concern the solicitation phase, therefore can only be pursued by creditors, and not the Receiver.

Importantly, Dragul's creditors have not assigned to the Receiver any claims they may have against ACF, and are entirely capable of representing their own interests. While the Receivership Order precludes creditors from independently prosecuting claims ***against Dragul and GDA*** as a condition for submitting their claims against the Estate (*see* FAC, Ex. 1 at ¶ 16), it requires nothing of the sort as to prosecution of claims against third parties like ACF. Thus, if the Receiver is held to have standing to prosecute clams on behalf of creditors against ACF, it would unfairly expose ACF to the possibility of duplicative litigation and inconsistent rulings.[2]

The Receiver cites ¶ 13(s) of the Receivership Order as the source of his authority to assert claims on behalf of Dragul's creditors. To the extent the Receivership Order purports to empower him to bring such claims, however, it exceeds the judiciary's power and cannot be enforced. *See Scholes v. Schroeder*, 744 F. Supp. 1419, 1420–23 (N.D. Ill. 1990) ("To the extent that the orders . . . purport to authorize suit on behalf of the investors, those orders are at odds with the fundamental command of Article III."); *Fleming*, 922 F.2d at 24–25 (although the district court empowered the receiver "to prevent irreparable loss, damage and injury to commodity customers and clients," the receiver lacked standing to sue for claims belonging to investors); *Marwil v. Farah*, No. 1:03–CV–0482–DFH, 2003 WL 23095657, at *5–7 (S.D. Ind. Dec.11, 2003) (receiver lacked standing to represent the investors notwithstanding the language of the receivership court

[2] This is not a merely theoretical concern. The Receiver has asserted in the FAC allegations concerning matters that are actively being litigated by creditors in other forums. *See e.g.*, FAC ¶¶ 67–71. This further underscores the fundamental unfairness that would ensue by allowing the Receiver to pursue claims on behalf of creditors that are able to sue on their own.

order). The Receivership court therefore did not have the power to grant the Receiver standing to bring suit on behalf of Dragul's creditors.[3]

2. The Receiver Fails to Allege Fraud Against ACF with the Required Specificity.

a. Each of the Claims for Relief Against ACF Are Subject to Rule 9(b) and Must be Plead with Particularity.

Rule 9(b) requires that "in all averments of fraud, the circumstances constituting fraud shall be stated with particularity." *State Farm Mut. Auto. Ins. Co. v. Parrish*, 899 P.2d 285, 288 (Colo. App. 1994). To satisfy this requirement, "the complaint must sufficiently specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." *Id.* (citations omitted). In other words, the plaintiff must allege with factual particularity the who, what, when, where and how of the fraud. *Zvelo, Inc. v. SonicWall, Inc.*, No. 06-cv-0045-PAB-KLM, 2013 WL 5443858, at *8 (D. Colo. Sept. 30, 2013); *In re Edmonds*, 924 F.2d 176, 180 (10th Cir. 1991).

Moreover, allegations "lumping together" multiple defendants are inadequate to satisfy Rule 9(b)'s particularity requirement. Instead, the plaintiff must allege specifically what conduct

[3] The Hershey Defendants previously sought a stay and moved to intervene in the Receivership Action on the basis that an order of a district court may not be subject to collateral attack in another district court. Their argument relies entirely on *State for Use of Dep't of Corrections v. Pena*, 911 P.2d 48 (Colo. 1996), which is inapposite. Unlike here, *Pena* did not involve an order exceeding the court's jurisdiction. Such an order is void and subject to attack at any time. *See City of Grand Junction v. Kannah Creek Water Users Assoc'n*, 192 Colo. 284, 290 (1976) (En Banc). Moreover, the reasoning underlying the rule set out in *Pena* is that appeal is the proper avenue to challenge a court's order. Here, however, ACF was not previously afforded an opportunity to challenge the Receivership Order because it is not a party to the Receivership Action. Indeed, both the Securities Commissioner and the Receiver have ardently urged the court in the Receivership Action to leave for this Court the issue of the Receiver's standing, as the Receivership court ultimately did.

is attributed to each defendant. *Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1237 (10th Cir. 2000) (plaintiff "failed to identify any specific Defendant who made these alleged fraudulent misrepresentations or omissions"); *Seidl v. Greentree Mortg. Co.*, 30 F. Supp. 2d 1292, 1305 (D. Colo. 1998) (under the requirement that fraud be plead with particularity, "[t]he lumping together of defendants in allegations of fact is impermissible."). The particularity requirement of Rule 9(b) applies to each element of the claim. *Kinsey v. Preeson*, 746 P.2d 542, 550 (Colo. 1987) (En Banc).

The heightened pleading standard of Rule 9(b) is required of all claims "sounding in fraud," regardless of the label attached to the claim or the theory of liability. *State Farm*, 899 P.2d at 289. Here, the first, fifth, sixth, and eleventh claims overtly attempt to allege a fraudulent scheme. The remaining claims against ACF likewise are subject to Rule 9(b) because they are premised upon the same alleged deceptive conduct. *See e.g., Van Leeuwan v. Nuzzi*, 810 F. Supp. 1120, 1123 (D. Colo. 1993) (claims for negligent misrepresentation are subject to Rule 9(b) if they aver fraud or mistake).

b. The Receiver's Allegations Fail to Meet the Particularity Requirement.

Although the Receiver has added to the FAC a plethora of superfluous allegations, his claims against ACF still conspicuously omit the "specific who, what, when, where, and how." *Zvelo*, 2013 WL 5443858, at *3. The Receiver purports to bring claims against ACF on behalf of numerous unidentified creditors, who invested an unspecified amount, at an unspecified time, in an unspecified entity, based on unspecified omissions or misrepresentations. *See* FAC ¶¶ 54–55, 294, 297, 325. For example, the Receiver alleges in a conclusory manner that 26 different SPEs were "used to fraudulently transfer funds to Defendants," without explaining how, by whom, when or how much. *Id.* ¶ 294. Similarly, he asserts that all of the commissions paid to Defendants were

undisclosed and illegal and were obtained from investors by fraud, without identifying who paid them, in connection with what transaction, and in reliance on what alleged misrepresentation. *Id.* ¶ 297. Exhibit 6, which purports to detail the allegedly fraudulent commissions paid to ACF, likewise does not provide this critical information. *Id.* ¶ 87, Ex. 6 (amended).[4]

Although the Receiver devotes many paragraphs to discussing a handful of transactions, he contends they are only "examples," and purports to sue for much more than they cover. Moreover, his "examples" only underscore the dearth of specific facts tending to implicate ACF. ***First,*** the Receiver repeatedly resorts to impermissible group allegations instead of detailing the role and actions of each Defendant. For example, he alleges that Dragul "in concert with the Fox and Hershey Defendants" sent misleading solicitation materials to investors. *Id.* ¶ 83. This prototypical group allegation seeks to mask what the specific allegations make clear: ACF did not distribute any solicitation materials to Dragul's investors at any time. Instead, ACF allegedly prepared solicitation materials only with respect to certain ACF-managed SPEs, which it allegedly sent only to ***its own*** investors, including Dragul. *E.g.*, *id.* ¶¶ 90-91, 122, 190-91. Dragul and Hershey, in turn, allegedly distributed the solicitation materials to Dragul's investors. *E.g., id.* ¶¶ 92-93, 200. In fact, other than improper conclusory allegations, there are no allegations that ACF ever had any direct communications with Dragul's investors. Similarly, in some paragraphs, the Receiver lumps ACF together with those who allegedly commingled Dragul investors' funds and

[4] In fact, the exhibits attached to the FAC reflect that at least in some cases the entities that paid the allegedly undisclosed commissions were not even Dragul entities, but rather ACF entities in which Dragul's investors had no interest. *See, e.g.*, FAC ¶¶ 98, 192, 196, 239, Ex. 9 (MSP LLC paid costs and fees, before an of Dragul's investors had even been solicited), Ex. 18 (commissions and fees paid by ACF-managed Prospect Square 15, LLC, in which neither Dragul nor his entities ever invested). The Receiver cannot possibly assert any claim to recover such fees.

diverted them to their use. *E.g.*, *id.* ¶¶ 328, 383, 387. But the specific allegations confirm that ACF had no role in the financial management of Dragul's SPEs and never benefitted from Dragul's alleged embezzlement. *See id.* ¶¶ 58–77.

Second, the Receiver seeks to fill in the gaps in his factual allegations against ACF by making material assertions solely "upon information and belief." Such allegations, however, are insufficient to satisfy Rule 9(b). *See State Farm*, 899 P.2d at 288 ("information and belief" allegations only sufficient if "accompanied by a statement on which the belief is founded," "the facts are peculiarly within the opposing party's knowledge," ***and*** "the complaint sets forth the *factual basis* for the plaintiff's belief"). For example, the Receiver accuses ACF of failing to maintain the required operating reserves[5] and "comingling" funds among its own accounts, *see* FAC ¶ 331(e)–(f), (h)–(i), but the only paragraphs cited in support of this contention that even relate to alleged comingling by ACF simply repeat substantially the same boilerplate allegation, made solely "upon information and belief." *Id.* ¶¶ 96, 124, 130, 194, 198.[6] These paragraphs cite not a single instance of funds being inappropriately transferred between ACF accounts. Nor do they explain how these allegations could possibly give rise to a claim by anyone on whose behalf the Receiver purports to sue.

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[5] The Exhibits reflect that statements regarding the operating reserves were contained in the "assumptions" field detailing certain financial "projections" in the solicitation materials. *See* Exs. 8, 12, 16. Such forward-looking "assumptions" are not the sort of factual statements that can give rise to a securities fraud claim. *See Bennett v. Coors Brewing Co.*, 189 F.3d 1221, 1230 (10th Cir. 1999) ("As a general rule, actionable fraud cannot consist of unfulfilled predictions or erroneous conjectures as to future events.")

[6] The Receiver gives the false impression that allegations of comingling against ACF enjoy substantial factual support by citing large swaths of the FAC, even though the vast majority of the allegations have nothing to do with ACF, let alone comingling by ACF, and those that concern ACF are conclusory. *See* FAC ¶ 331(e)–(f), (h)–(i).

Further illustrating the Receiver's strategic reliance on impermissible and conclusory group allegations is the assertion that "Dragul and the Fox Defendants" did not notify investors prior to the sale of properties, did not allow investors to "cash out" their investments, and made false statements to induce investors to provide their consent to the sale and to rolling over their investments. *See id.* ¶ 331(g), (m), (o). While the paragraphs cited in support of these allegations purport to provide details concerning such conduct by Dragul and Hershey, they are devoid of any such facts with respect to ACF. *See id.* ¶¶ 60–62, 106–11, 160, 177–78, 183, 189.[7] The only allegations concerning ACF again are conclusory ones, often made "upon information and belief," without any details regarding the basis for such belief. *See id.* ¶¶ 104–05, 112, 118, 137, 181, 187–88, 204–06, 211.

The Receiver similarly relies on allegations made solely "upon information and belief" when he asserts that ACF "diluted" the value of member interests in the SPEs. *See id.* ¶¶ 125, 128, 199, 331 (d), (j), (p). The FAC provides some details with respect to only one instance of alleged dilution by ACF: that ACF supposedly sold a membership interest in MSP LLC to Fox's family member at a discounted price. FAC ¶ 103. These allegations, however, concern a sale that occurred in July 2009, months ***before*** any Dragul investor invested in MSP through GDA Market. *Id.* ¶¶ 101, 103. The single instance that is described with some details, therefore, could not have possibly caused the dilution of any yet-to be-acquired interest by Dragul's investors.

In sum, having taken the opportunity to amend the Complaint, the Receiver still fails to assert fraud against ACF with the particularity required under Rule 9(b).

[7] Other paragraphs cited in support simply have nothing to do with the alleged conduct. *See, e.g.*, FAC ¶¶ 53–56, 119–40, 159, 161.

3. The First Claim for Relief for Securities Fraud Must Fail.

a. The Receiver Cannot Allege The Required Elements of a Fraudulent Misrepresentation and Reliance.

The gravamen of the Receiver's claims with respect to ACF is that it supposedly misstated the price in solicitation materials to conceal the payment of improper commissions and fees. The basis for these allegations is that in each instance ACF had already acquired the respective property and sold membership interests in the SPE that would own the property at a higher valuation. In other words, according to the Receiver, ACF should have sold memberships in each SPE at the price it paid for the real property itself.

The Receiver's fraud theory blinks at the fact that real property transactions, including the prices at which those transactions occurred, are a matter of public record. Indeed, records of the type attached hereto as **Exhibit A**[8] were readily accessible to the investors when they acquired their interests in the respective SPEs, and the investors are deemed to have constructive knowledge of this information. *Nile Valley Fed. Savings & Loan Assoc, v. Sec. Title Guarantee Corp.*, 813 P.2d 849, 852 (Colo. App. 1991) ("If a document is properly recorded, the whole world is deemed to have constructive notice of the encumbrance."). Because investors could have easily obtained

[8] Where a document is referred to in the complaint and central to a plaintiff's claim, "the defendant may submit an authentic copy to the court to be considered on a motion to dismiss, and the court's consideration of the document does not require conversion of the motion to one for summary judgment." *Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005) (citation omitted). Of course, the Court may also take judicial notice of Exhibit A pursuant to C.R.E. 201. *See Bank of N.Y. Mellon v. Peterson*, 442 P.3d 1006, 1009 n.3 (Colo. App. 2018). The FAC is replete with details regarding real estate transactions that necessarily implicate the recorded documents related thereto. Accordingly, Exhibit A is not "outside the pleadings" and may be considered by the Court. *Yadon*, 126 P.3d at 336 ("A document that is referred to in the complaint, even though not formally incorporated by reference or attached… is not considered a 'matter outside the pleading.'" (citation omitted)).

information from the public record regarding the price paid for the property, the Receiver's allegations fail to state facts showing either a misrepresentation or justifiable reliance.

In *Kesicki v. Mitchell*, No. 06-CV-11247, 2008 WL 2958598 (Colo. Dist. Ct. Apr. 24, 2008), the trial court rejected a similar fraud theory based on the immediate sale of property at a marked-up price. The defendant in *Kesicki* acquired real property for $60,000, and several weeks later sold an interest in the property, representing that the property was worth $99,000. Rejecting plaintiff's fraud argument, the court held:

> [T]here was nothing intrinsically improper about [defendant's] immediate profit, or the manner in which he structured the Agreement. The parties were free to either enter into this Agreement under the terms expressed, or to reject the Agreement. They were also free to conduct their own examination or investigation into the Agreement, and apparently chose to do nothing in that regard.

Id. Simply put, offering an interest in a property at a marked-up price is not fraud. Offering an interest in an entity owning the property at a higher valuation than the price paid to acquire the property is an even more attenuated fraud theory.

The only remaining allegations involving any kind of misrepresentations or omissions by ACF are the conclusory allegations that ACF and Dragul did not notify Dragul's investors prior to the sale of certain properties, but by the same token also made false statements to induce them to provide their consent to the sales and to rolling over their investments. *See* FAC ¶ 118, 181, 204–06, 211. As they pertain to ACF, these allegations are undercut by the corporate structure of the investments. The Receiver does not allege that Dragul's investors owned any interest directly in the ACF-managed SPEs. Rather, in each instance, Dragul's investors invested in a Dragul entity, which in turn acquired an interest in an ACF-managed entity. *See id.* ¶¶ 102-03, 167–70. The Receiver concedes that Dragul, who was authorized to act on behalf of his SPEs, in fact was aware

of the sales of the properties and the proposed exchanges. *See, e.g.*, *id.* ¶ 131. The allegations therefore confirm that ACF had no obligation to directly notify Dragul's investors of anything, and had no reason to be involved in whether Dragul's investors could cash out their investments. Moreover, in each instance, the Receiver alleges that Dragul's SPEs held only small minority interests in the ACF-managed SPEs. *See id.* ¶¶ 102, 121, 126, 180. Therefore, even if Dragul and all of his investors objected to the sales, the allegations confirm they could not have impacted any decision concerning the disposition of assets by the ACF SPEs.

b. The Claim for Securities Fraud Is Barred by the Statute of Repose.

Securities fraud claims under the Colorado Securities Act, C.R.S. § 11-5-501, *et seq.*, are subject to a statute of limitations of three years and a statute of repose of five years. C.R.S. § 11-51-604(8). Statutes of repose differ from statutes of limitation in that they are absolute bars against claims after a set date, not subject to equitable tolling. *Gleason v. Becker-Johnson Associates, Inc.*, 916 P.2d 662, 664 (Colo. App. 1996). The Receiver devotes much of the FAC to discussing transactions that occurred well before January 2015, and therefore are clearly time-barred. *See e.g.*, FAC ¶¶ 90–132, 163–200.

Only two potentially relevant transactions involving ACF are alleged to have occurred within the limitations period: (1) the April 2018 sale of Loggins and (2) the September 2018 sale of Laveen Ranch. *See id.* ¶¶ 135, 204–08. And the assertions concerning these transactions exemplify the Receiver's dependence on conclusory group allegations as to ACF. *See, e.g.*, *id.* ¶¶ 137, 211. The Receiver alleges that Dragul did not inform his investors of the sale of Loggins and misappropriated proceeds that ACF distributed to GDA Market. *Id.* ¶¶ 138–40. The Receiver does not allege that ACF was involved in Dragul's activity but alleges, in conclusory fashion, that it

"knew" or "should have known" about Dragul's misconduct. Even if it were true, however, a defendant generally is not liable for "nonfeasance," *i.e*., for not taking action when he/she "knew" or "should have known" about a tortfeasor's misconduct, which the Receiver implies as to ACF here and throughout the FAC. RESTATEMENT (SECOND) OF TORTS § 314, cited in *Klein v. Morgen*, 760 F. Supp. 1403, 1408 (D. Colo. 1991).

With respect to both transactions, the Receiver further alleges "[u]pon information and belief," that ACF did not obtain approval from a majority of the SPE members for the sales of these properties. FAC ¶ 137. The Receiver does not explain the basis for his belief, what alleged misrepresentation or concealment was made and by whom, or how Dragul's investors allegedly relied on it to their detriment, particularly given their minority interest in the property. *See id.* Because the only allegations that are not time-barred are untenable and so clearly fail under Rule 9(b), the Receiver's first claim for relief is barred by the statute of repose.

c. The Receiver Fails to Allege Any Failure to Register Securities and Violation of the License and Notice Requirements That Is Not Time Barred.

Claims pursuant to section 604(1) and 604(2)(A) of the Colorado Securities Act must be brought within "two years of the contract of sale." C.R.S. § 11-51-604(8). Here, the Receiver has not alleged any instance on or after January 21, 2018 that can give rise to this claim for relief.

A private cause of action for securities fraud arising from the sale of unregistered securities or the sale of securities by unlicensed representatives lies with the purchasers of such securities. *See* C.R.S. § 11-51-604(1) ("Any person who sells a security . . . is liable ***to the person buying the security*** . . . . (emphasis added)); § 11-51-604(2)(A) ("any broker-dealer or sales representative who sells a security . . . is liable ***to the person buying the security***" (emphasis added)).

As noted, the only timely transactions alleged are the sales of the Loggins and Laveen Ranch properties, in which Dragul's investors already held membership interests. *See* FAC ¶¶ 135, 204–08. Because Dragul's investors did not purchase securities in connections with the post-January 21, 2018 transactions, any claims brought on their behalf under sections 604(1) and 604(2)(A) are barred by the statute of limitations.

d. The Receiver Does Not Plausibly Allege that ACF Either Controlled or Provided Substantial Assistance to GDA.

The Securities Act provides for two blanket forms of vicarious liability: (1) control person and (2) substantial assistance. Control person liability requires "direct[] or indirect[]" "control[]" of a person who violates the Securities Act. C.R.S. § 11-51-604(5)(a), (b). Substantial assistance liability requires the defendant to have "know[n]" that another person was engaged in illegal conduct and to have given that person "substantial assistance." C.R.S. § 11-51-604(5)(c).

The Receiver has not plausibly alleged that ACF was either a control person or substantially assisted Dragul or GDA. While the FAC is replete with conclusory allegations and conjecture, there are no facts showing ACF "controlled" GDA. *See Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1108 (10th Cir. 2003) (granting motion to dismiss control liability claim as to defendant who sat on corporation's board of directors, but finding control liability had been adequately pled for the President and CEO who "possessed the ultimate management authority of the corporation on a daily basis"). The Receiver does not and cannot allege that ACF participated in the financial management of any of the Dragul SPEs, much less controlled that activity. Nor are there any allegations that it was aware that Dragul commingled and diverted funds. Indeed, ACF is among the multitude of GDA's victims, and Mr. Fox is one of the largest creditors of the Estate. ACF's alleged preparation of solicitation materials and updates sent to its own investors

(which sometimes included a Dragul entity), and its alleged acceptance of commissions, simply do not suffice to attribute to ACF liability for Dragul's and GDA's alleged Ponzi scheme.

4. The Fifth and Sixth Claims for Relief for Violations of or Aiding and Abetting Violations of the Colorado Organized Crime Control Act, C.R.S. § 18-17-101, *et seq*. ("COCCA") Fail to State a Claim.

> To state a claim for violating COCCA, the Receiver must allege that ACF:
>
> (1) through the commission of two or more predicate acts (2) which constitute a pattern (3) of racketeering activity (4) directly or indirectly conducted or participated in (5) an enterprise and (6) the plaintiff was injured in its business or property by reason of such conduct.

C.R.S. § 18-17-104(3); *Sender v. Mann*, 423 F. Supp. 2d 1155, 1177 (D. Colo. 2006). The Receiver has failed to plead these elements, much less with the required specificity.

a. The Receiver Fails to Allege Timely Predicate Acts Under COCCA.

At least one predicate act must occur within the applicable statute of limitations period and the second act must occur within 10 years prior to that act. *People v. Davis*, 296 P.3d 219, 229 (Colo. App. 2012); C.R.S. § 18-17-103(3). The Receiver purports to assert the following predicate acts: (1) violations of the Colorado Securities Act; (2) wire fraud; (3) civil theft; and (4) bankruptcy fraud under 18 U.S.C. § 157. FAC ¶ 386. But these alleged predicate acts cannot support a COCCA claim. C.R.S. § 18-17-103(5) provides a dispositive list of what constitutes predicate acts, and neither civil theft nor bankruptcy fraud under 18 U.S.C. § 157 are included in that statutory list.[9]

[9] C.R.S. § 18-17-103(5)(a) states that racketeering activity is "(a) Any conduct defined as "racketeering activity" under 18 U.S.C. 1961(1)(A), (1)(B), (1)(C), and (1)(D)." 18 U.S.C.A. § 1961(1)(D) specifically excludes from its scope "a case under section 157 of this title." Therefore, bankruptcy fraud is not a cognizable predicate act. *See Cadle Co. v. Flanagan*, 271 F. Supp. 2d 379, 385 (D. Conn. 2003). And C.R.S. § 18-17-103(5)(b)(II) makes *criminal* theft pursuant to C.R.S. § 18-4-401, rather than civil theft pursuant to C.R.S. § 18-4-405, a predicate act.

And for the same reasons discussed at length previously in Sections 2 and 3, the Receiver has failed to allege any timely acts of securities fraud or wire fraud.

b. The Receiver Fails to Allege an Enterprise Distinct from the Persons Allegedly Engaged in Racketeering Activity.

Section 104(3) of COCCA requires that the "enterprise" and the "person" engaged in the racketeering activity be distinct. *Llacua v. W. Range Assoc'n*, 930 F.3d 1161, 185–87 (10th Cir. 2019) (affirming dismissal of RICO claim where defendant persons were part of, not distinct from, the alleged enterprises); *People v. Pollard*, 3 P.3d 473, 476–77 (Colo. App. 2000) (under COCCA an enterprise must consist of at least one other person or entity besides the defendant). Here, the members of the alleged "enterprise" are all named Defendants who are also alleged to be "persons" within the meaning of COCCA. There is therefore no distinction in the FAC between the alleged "enterprise" and the "persons," as required for liability under COCCA.

c. The Receiver Fails to Allege ACF Conducted or Participated in the Racketeering Enterprise.

To be liable under COCCA, a defendant must conduct or participate in the operation of the racketeering enterprise. *Reeves v. Ernst & Young*, 507 U.S. 170, 185 (1993). As more fully discussed in Sections 2.b, 3.a, and 3.b above, the conduct attributed to ACF strictly concerned communications with its own investors, and does not reflect participation or involvement in the affairs of the illegal "enterprise," which allegedly was designed to defraud Dragul's investors. There are no facts showing ACF had any knowledge of Dragul's alleged commingling activity, diversion of investor's funds, or the insolvency of his operation. Nor are there any specific allegations that ACF ever had any communications with Dragul's investors. The allegations

against ACF therefore do not constitute the kind of participation necessary for liability under Section 104(3).

d. The Receiver Fails to Allege Aiding and Abetting Liability.

Aiding and abetting in Colorado requires that the defendant knowingly participated in the underlying breach or violation. *Nelson v. Elway*, 971 P.2d 245, 249–50 (Colo. App. 1998). The defendant must have had actual knowledge of the primary violation—it is not enough to have engaged in reckless or negligent conduct. *Stat-Tech Liquidating Tr. v. Fenster*, 981 F. Supp. 1325, 1339 (D. Colo. 1997). Instead of alleging specific facts showing ACF's knowledge of the alleged Ponzi scheme, the Receiver repeats his ill-fated allegations for a COCCA violation and sporadically inserts conclusory phrases like "through aiding and abetting." *See, e.g.*, FAC ¶ 399. As more fully discussed in Sections 2.b, 3.a, 3.b, and 4.c, these allegations do not suffice to primary liability under COCCA and fall far short of asserting aiding and abetting liability.

5. The Receiver Fails to State a Timely Claim for Either Fraudulent Transfer or Unjust Enrichment.

Pursuant to C.R.S. § 38-8-110, a cause of action for avoidance of a transfer made with actual intent to defraud under C.R.S. § 38-8-105(1)(a) is "extinguished" unless it is brought "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." C.R.S. § 38-8-110. The same limitation period applies to the unjust enrichment claim because the theory and facts underlying it are nearly identical to the fraudulent transfer claim. *See Sterenbuch v. Goss*, 266 P.3d 428, 436–37 (Colo. App. 2011). Therefore, liability for the eleventh and twelfth claims may be based only on payments occurring on or after January 21, 2016.

Of the commissions listed in the summary chart of Exhibit 6, only three allegedly were within the limitations period: (1) March 2016 payment for $400,000; (2) April 2016 payment for $45,000; and (3) June 2016 payment for $1 million. FAC, Ex. 6. There are literally ***no*** facts alleged regarding the first and third payments. With respect to the remaining $45,000 payment, the FAC contains just two conclusory paragraphs, stating that it was an "undisclosed and unauthorized commission" relating to the loan refinancing on Loggins and allegedly "represented equity in the property to which" Dragul's investors were entitled. FAC ¶¶ 133–34. There is not a single fact explaining why this commission allegedly was impermissible, how it could possibly represent equity to which Dragul's investors were entitled, or what portion of it could be attributable to the 2.824% interest in Loggins allegedly held by GDA Market. Therefore, the only allegations concerning any payments within the limitations period are wholly inadequate to state a claim for fraudulent transfer or unjust enrichment.

CONCLUSION

For the foregoing reasons, ACF respectfully urge the Court to grant its motion to dismiss the FAC in its entirety as to ACF. A proposed order granting the requested relief is submitted herewith.

Dated: July 6, 2020.

Respectfully submitted,

MOYE WHITE LLP

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and

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020 a true and correct copy of the foregoing was electronically filed via CCEF and served on the following:

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Real Property Transaction Record

Source Information

Filings Current Through:	02/21/2020
County Last Updated:	03/12/2020
Frequency of Update:	WEEKLY
Current Date:	03/13/2020
Source:	COUNTY CLERK AND RECORDER

Owner Information

Owner(s):	MARKET AT SOUTHPARK 09 LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Absentee Owner:	SITUS FROM SALE (ABSENTEE)
Property Address:	7901 BROADWAY LITTLETON, CO 80122-2718
Mailing Address:	C/O ACF PROPERTY MANAG 12411 VENTURA BLVD STUDIO CITY, CA 91604-2407

Transaction Information

Transaction Date:	08/11/2009
Seller Name:	REAL ESTATE ACCOUNT
Sale Price:	$22,000,000.00
Deed Type:	GRANT DEED
Document Type:	SPECIAL WARRANTY DEED
Type of Transaction:	RESALE
Mortgage Amount:	$15,500,000.00
Mortgage Type:	CONVENTIONAL
Mortgage Deed Type:	DEED OF TRUST
Mortgage Date:	08/11/2009
Lender Name:	DB PRIVATE WEALTH MTG
Address:	NEW YORK, NY 10017-1216
Recording Date:	08/11/2009
Document Number:	B9087676
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	MORTGAGE

Property Information

County:	ARAPAHOE
Assessor's Parcel Number:	2077 34 3 02 003
Property Type:	RETAIL
Building Square Feet:	65442

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

EXHIBIT A

authorized under the FCRA. By accessing one of our services, you agree not to use the service or data for any purpose authorized under the FCRA or in relation to taking an adverse action relating to a consumer application.

End of Document

Real Property Transaction Record

Source Information

Filings Current Through:	02/21/2020
County Last Updated:	03/12/2020
Frequency of Update:	WEEKLY
Current Date:	03/13/2020
Source:	COUNTY CLERK AND RECORDER

Transaction Information

Transaction Date:	11/15/2011
Seller Name:	VILLAGE CROSSROADS 11 LLC
Sale Price:	$30,000,000.00
Deed Type:	GRANT DEED
Document Type:	SPECIAL WARRANTY DEED
Type of Transaction:	RESALE
Recording Date:	11/17/2011
Document Number:	D1113493
	FIDELITY NATIONAL TITLE INSURA
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH

Owner Information

Owner(s):	MARKET AT SOUTHPARK 1674 LLC
Ownership Rights:	UNDIVIDED INTEREST/ UNDIVIDED INDIVIDUAL
Corporate Owner:	CORPORATE OWNER
Partial Interest:	PARTIAL INTEREST
Property Address:	CO
Mailing Address:	3333 NEW HYDE PARK RD 100 NEW HYDE PARK, NY 11042-1205

Property Information

County:	ARAPAHOE
Property Type:	MISCELLANEOUS

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

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