

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

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CASE NUMBER: 2020CV30255

**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.

▲ COURT USE ONLY ▲

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Case No.: 2020CV30255

Division/Courtroom: 414

**RECEIVER'S UNOPPOSED MOTION LEAVE TO FILE IN EXCESS OF  
PAGE LIMIT**

Plaintiff, Harvey Sender, solely in his capacity as Receiver for the “Estate” described below (the “**Receiver**”), hereby requests leave to file the omnibus response to the motions to dismiss filed by Dragul, the Hershey and Fox Defendants and the Markusch Defendants (the “Motions to Dismiss”) with an additional 19 pages in excess of the 15-page limit for responses as provided by C.R.C.P. 121, §1-15(1)(a), (a total of 54- pages).

### **Certificate of conferral**

Counsel for the Receiver has conferred with counsel for Dragul, and the Fox and Hershey Defendants, who do not oppose the request for additional pages.

### **Background**

1. On August 15, 2018, Gerald Rome, the then Securities Commissioner for the State of Colorado (Rome and his three successors are collectively the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities, *Chan v. Dragul, et al.*, Case No. 2018CV33011.

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver in the Receivership Action, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to C.R.S. § 11-51-602(1) and C.R.C.P. 66.

3. On August 30, 2018, the Receivership Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender receiver for Dragul and the GDA Entities and their respective properties and assets, as well

as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. On January 21, 2020, the Receiver filed his Complaint commencing this case against the above-captioned Defendants.

5. Following Motions to Dismiss filed by all defendants except for the Kahn Defendants, the Receiver filed his First Amended Complaint on June 1, 2020.

6. On July 6, 2020, Dragul, and the Fox and Hershey Defendants filed three separate Motions to Dismiss the Amended Complaint, totaling sixty-five (65) pages. The Markusch Defendants obtained an extension of time.

7. On July 15, 2020, in anticipation of the Markusch Defendants Motion to Dismiss, and in the interest of efficiency and economy, since several of the Defendants’ arguments overlapped, the Receiver filed a Motion seeking both additional time and pages to submit a single, omnibus response, which addresses all of the Defendants’ Motions to Dismiss in a single pleading (the “Omnibus Response”).

8. On July 17, 2020, this Court granted the Receiver’s Motion for Extension of Time and for Leave to File in Excess of the Page Limit, allowing Receiver to file their Omnibus Response with a total of 35 pages.

9. On July 31, 2020, the Markusch Defendants filed an eight (8) page Motion to Dismiss.

10. Dragul and the Fox filed joinders in the other Defendants motions to dismiss.

## **Motion**

11. As the Receiver's counsel has compiled its Omnibus Response, it has become apparent that more pages are needed than previously requested to thoroughly respond to the four motions to dismiss.

12. The Receiver respectfully requests leave to file a fifty-five page Omnibus Response – nineteen (19) pages in excess of what was previously requested (totaling 54 pages).

13. Such relief is warranted because (a) the Receiver is responding to motions to dismiss totaling seventy-three (73) pages and (b) had the Receiver elected to file separate responses to the four motions to dismiss, he would have been allotted one hundred (100) pages.

14. A proposed order is tendered herewith.

WHEREFORE, the Receiver respectfully requests leave to file a single Omnibus Response to the four pending motions to dismiss not to exceed fifty-four (54) pages.

Dated: August 17, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

*Rachel A. Sternlieb*

By: *s/ Rachel A. Sternlieb* \_\_\_\_\_

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17th day of August, 2020 a true and correct copy of the foregoing 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.*