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| <p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p> | |
| <p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p>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.</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>Attorneys for Defendant Gary J. Dragul Paul L. Vorndran, Atty. Reg. No. 22098 Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1999 Broadway, Suite 3150 Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com cmills@joneskeller.com</p> | <p>Case No. 2020CV30255</p> <p>Courtroom: 414</p> |
| <p style="text-align: center;">DEFENDANT GARY DRAGUL’S NOTICE OF PARTIAL JOINDER IN DEFENDANTS (1) FOX’S & ACF PROPERTY MANAGEMENT’S, & (2) HERSHEY’S & PERFORMANCE HOLDINGS, INC.’S, REPLIES IN SUPPORT OF THEIR MOTIONS TO DISMISS FIRST AMENDED COMPLAINT</p> | |

Defendant Gary Dragul, through undersigned counsel, hereby respectfully gives notice that he joins in and adopts as his own portions of the replies in support of motions to dismiss the

Receiver's First Amended Complaint filed by Defendants (1) ACF Property Management, Inc. and Alan Fox; and (2) Marlin Hershey and Performance Holdings, Inc. as set forth below.

As to the reply in support of the motion to dismiss filed on September 8, 2020 by Defendants ACF Property Management, Inc. and Alan Fox, Mr. Dragul joins in the following sections:

- All of Argument Sections 1.a, 1.b, and 1.d, except Mr. Dragul does not join in the characterization of Mr. Dragul's settlement agreement with the Receiver in Footnote 3, which the Fox Defendants describe as one "in which SSC 02 was deemed to be part of the Estate." In fact, Paragraph 9 of that settlement agreement expressly provides Mr. Dragul did not admit to any fault or liability, and entered into the settlement agreement to avoid further disputes and litigation costs.
- All of Argument Section 2.a.
- All of Argument Section 2.b., except not the second paragraph of this section.
- The first three paragraphs of Argument Section 2.c.i.
- All of Argument Sections 2.c.ii, 2.d.i, 2.d.ii, and 2.e.

As to the reply in support of motion to dismiss filed on September 8, 2020 by Defendants Marlin S. Hershey and Performance Holdings, Inc., Mr. Dragul joins in the entire reply, with the following additional notes:

- The Hershey Defendants' argument in Section A.1 on page 4 that the Securities Commissioner has already asserted the securities claims for which the Receiver argues he is borrowing the Commissioner's standing to himself assert applies with particular force to Mr. Dragul because Mr. Dragul is the primary named defendant in the Commissioner's

suit asserting those claims. Thus, Mr. Dragul faces duplicative liability if the Receiver is permitted to pursue the same claims.

- In Argument Section D on page 10, the Hershey Defendants suggest the statute of limitations for COCCA claims is five years. In fact, it is two years. *See, e.g., F.D.I.C. v. Refco Group, Ltd.*, 989 F.Supp. 1052, 1078 (D. Colo. 1997) (“Because there is no express statute of limitations within COCCA, the two year general limitation of actions period established by Colorado Revised Statutes § 13-80-102(1)(i) (1997) applies.”); *see also Sender v. Mann*, 423 F.Supp.2d 1155, 166 (D. Colo. 2006).

In so joining, Mr. Dragul reserves all rights and does not waive any arguments set forth in his own motion to dismiss the First Amended Complaint, or his own reply in support thereof.

Dated this 15th day of September, 2020.

JONES & KELLER, P.C.

s/ Christopher S. Mills

Paul L. Vorndran, #22098

Christopher S. Mills, #42042

*ATTORNEYS FOR DEFENDANT GARY J.
DRAGUL*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2020, a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S NOTICE OF PARTIAL JOINDER IN DEFENDANTS (1) FOX'S & ACF PROPERTY MANAGEMENT'S, & (2) HERSHEY'S & PERFORMANCE HOLDINGS, INC.'S, REPLIES IN SUPPORT OF THEIR MOTIONS TO DISMISS FIRST AMENDED COMPLAINT** was filed and served via the Colorado Court E-filing system to the following:

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