

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429</p>	<p>DATE FILED: November 6, 2020 4:47 PM FILING ID: CB27793278C0C CASE NUMBER: 2020CV30255</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, BENJAMIN KAHN, THE CONUNDRUM GROUP, LLP, SUSAN MARKUSCH, ALAN C. FOX, ACF PROPERTY MANAGEMENT, INC., MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, INC., OLSON REAL ESTATE SERVICES, LLC, JUNIPER CONSULTING GROUP, LLC, and JANE DOES 1-10, and XYZ CORPORATIONS 1-10.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for ACF Defendants: Lucas T. Ritchie, Atty. Reg. No. 35805 Eric B. Liebman, Atty. Reg. No. 27051 Joyce C. Williams, Atty. Reg. No. 52930 MOYE WHITE LLP 16 Market Square 6th Floor 1400 16th Street Denver, CO 80202 Telephone: 303-292-2900 Email: Luke.Ritchie@moyewwhite.com Eric.Liebman@moyewwhite.com Joyce.Williams@moyewwhite.com</p> <p>and</p> <p>Gary S. Lincenberg (<i>admitted pro hac vice</i>) Sharon Ben-Shahar Mayer (<i>admitted pro hac vice</i>) James S. Threatt (<i>admitted pro hac vice</i>) BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C. 1875 Century Park East, Twenty-Third Floor Los Angeles, CA 90067 Telephone: 310-201-2100 Email: glincenberg@birdmarella.com smayer@birdmarella.com jthreatt@birdmarella.com</p>	<p>Case Number: 2020CV30255</p> <p>Courtroom 414</p>

**UNOPPOSED JOINT MOTION OF DEFENDANTS ACF PROPERTY MANAGEMENT, INC.,
ALAN C. FOX, MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, LLC, AND GARY
DRAGUL FOR ENLARGEMENT OF TIME TO ANSWER OR OTHERWISE RESPOND TO
RECEIVER'S FIRST AMENDED COMPLAINT**

Defendants ACF Property Management, Inc., Alan C. Fox, Marlin S. Hershey, Performance Holdings, LLC, and Gary Dragul (collectively "Movants"), each through his/its respective counsel, move the Court for an order granting them a thirty-five day enlargement of time, to and including, Thursday, December 17, 2020, within which to answer or otherwise respond to Plaintiff Harvey Sender's (the "Receiver") First Amended Complaint ("FAC"). As good cause for the requested relief, Movants state as follows:

C.R.C.P. 121 §1-11 CERTIFICATE OF SERVICE ON CLIENTS

The undersigned certify that a copy of this motion has been served upon Movants.

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

The undersigned certify they have, in good faith, conferred with the Receiver's counsel about this motion and, based thereon, advise the Court that the Receiver does *not* oppose the requested relief.

1. On June 1, 2020, the Receiver filed his FAC, which consists of 127 pages setting forth 448 numbered paragraphs and 45 exhibits. In the FAC, the Receiver alleges twelve (12) claims against ten named Defendants and up to twenty (20) unnamed parties. Pursuant to C.R.C.P. 15(a), Movants' original deadline for answering or otherwise responding to the First Amended Complaint was June 15, 2020.

2. On June 5, 2020, Movants along with Defendants Benjamin Kahn, The Conundrum Group, LLP, Susan Markusch, and Olson Real Estate Services, LLC jointly moved for an unopposed twenty-one day enlargement of time to answer or otherwise respond to the FAC. On

June 8, 2020, the Court granted that unopposed motion and set July 6, 2020 as Movants' first-enlarged deadline to answer or otherwise respond to the FAC.

3. On July 6, 2020, Movants filed their respective motions to dismiss the FAC. Briefing on those motions to dismiss the FAC carried on over the course of three months. Those motions to dismiss became ripe for determination on September 8, 2020.

4. On October 28, 2020, the Court entered its Orders denying Movants' respective motions to dismiss. Pursuant to C.R.C.P. 6(a)(2) and 12(a)(1)(A), Movants' current deadline to answer or otherwise respond to the FAC is thus Thursday, November 12, 2020.

5. C.R.C.P. 6(b) provides the Court with broad discretion to grant requests for enlargement of case management deadlines when made prior to the expiration of the prescribed period. Movants' presently requested enlargement is not only timely within the meaning of C.R.C.P. 6(b), but necessary because of the following:

- a. the length and complexity of the 127-page FAC;
- b. the complicated and lengthy procedural history of the underlying receivership action, which must be assessed before answering or otherwise responding; and
- c. the need for Movants to carefully assess their options regarding the Court's denial of their motions to dismiss—several of which options must also be exercised on or before the current deadline for answering or otherwise responding to the FAC.

6. The requested enlargement will not interfere with any time currently set for the completion of discovery, for a hearing of a motion, or for trial.

7. The Receiver has already agreed to the requested enlargement and thus will not be prejudiced. Further, the requested enlargement is not sought for improper purposes or to unnecessarily delay this action.

8. As detailed above, Movants requested and were granted one previous enlargement of their deadline to answer or otherwise respond to the FAC.

WHEREFORE, Movants respectfully request that the Court enter an order granting them a thirty-five day enlargement of time, to and including, Thursday, December 17, 2020, within which to answer or otherwise respond to the Receiver's First Amended Complaint. A proposed order granting the requested relief is submitted herewith

Dated: November 6, 2020

Respectfully submitted,

MOYE WHITE LLP

s/ Lucas T. Ritchie

Lucas T. Ritchie

Eric B. Liebman

Joyce C. Williams

and

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s/ Christopher S. Mills

Christopher S. Mills

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Attorneys for Gary Dragul

CERTIFICATE OF SERVICE

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

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