

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p>DATE FILED: November 16, 2020 10:51 AM FILING ID: 6C5F1B2044576 CASE NUMBER: 2018CV33011</p>
<p><b>Plaintiff:</b> Tung Chan, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p><b>RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH BROWNSTEIN HYATT FARBER SCHRECK, LLP</b></p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, Inc. (“GDAREM”), and related entities, including Rose, LLC (“Rose”) (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving a settlement agreement with Brownstein Hyatt Farber Schreck, LLP (“BHFS”). A copy of the settlement agreement is submitted as **Exhibit 1** (the “Settlement Agreement”).

## I. Background

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 30, 2018, the 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 ¶ 5.

3. The Receivership Order expressly includes Dragul, GDARES, and GDAREM, and all of their assets, within the Receivership Estate. Receivership Order ¶ 9. The Estate also includes all of the interests of Dragul, GDARES, and GDAREM in any of their subsidiaries or related companies “including without limitation the ‘LLC Entities’ identified in the Commissioner’s Motion and Complaint for Injunctive and Other Relief.” Receivership Order ¶ 9. Rose is one of the “LLC Entities” identified in the Commissioner’s Complaint and therefore included within the Receivership Estate. *See* Aug. 15, 2018, Compl. ¶ 21 (table).

4. Other than Dragul’s former personal residence at 10 Cherry Lane Drive, Englewood, Colorado and those assets abandoned by the Receiver, all assets of Dragul and the GDA Entities were placed in the Receivership Estate, subject to the control of the Receiver “to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with Dragul, GDARES and GDAREM.” Receivership Order ¶¶ 9, 13(a). The assets placed into the Estate

expressly included all “claims, and causes of action” of Dragul and the GDA Entities. Receivership Order ¶ 9.

5. Under the Receivership Order, the Receiver has the authority to prosecute causes of action against third-parties, to the exclusion of Dragul and the GDA Entities. Receivership Order ¶¶ 13(o) & (s).

6. Absent permission from the Receiver or a further order of this Court, Dragul and the GDA Entities are prohibited from “[h]olding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity.” Receivership Order ¶ 19(c).

7. On December 13, 2018, pursuant to a court order, the Receiver abandoned Dragul’s 17.85% interest in the entity known as YM Retail 07 A, LLC and Dragul’s management rights in the entity known as Safeway Marketplace Manager 07, Inc. YM Retail 07 A, LLC and Safeway Marketplace Manager 07, Inc. owned and managed real property located at 6460 East Yale Avenue in Denver, Colorado (the “YM Property”).

8. On September 3, 2020, Dragul filed a motion in this action seeking a determination that claims Dragul and the GDA Entities purport to hold against certain accountants, attorneys, and consultants, including BHFS, had been abandoned by the Receiver, such that Dragul could pursue them for his own benefit (the “First Abandonment Motion”). On October 1, 2020, the Court denied that motion

and Dragul was denied permission to file any such lawsuit on behalf of himself or the GDA Entities.

9. On October 7, 2020, Dragul, GDARES, GDAREM, and Rose filed a lawsuit in the Eighth Judicial District Court in Clark County, Nevada against BHFS and 41 current and former attorneys and paralegals at BHFS (Case No. A-20-822625-C) (the “Nevada Action”). The complaint filed in the Nevada Action (the “Nevada Complaint”) asserts causes of action for malpractice, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and breach of fiduciary.

10. On October 26, 2020, Dragul filed a second motion in this action seeking a determination that the claims asserted in the Nevada Action have been abandoned by the Receiver, such that Dragul can pursue them for his exclusive benefit (the “Second Abandonment Motion”). The Nevada Complaint is attached as Exhibit 2 to the Second Abandonment Motion.

11. The proposed Settlement Agreement resolves all claims of Dragul and the GDA Entities asserted in the Nevada Action.

**II. The claims asserted in the Nevada Action are property of the Estate.**

12. The Receiver has reviewed the Nevada Complaint and believes all of the claims asserted therein are property of the Receivership Estate.

13. Some of the claims described in the Nevada Complaint concern legal work BHFS did in connection with the YM Property. However, as the Receiver previously explained in response to the First Abandonment Motion, whether a claim concerning the YM Property is part of the Receivership Estate depends on the

“ownership of that claim.” Sept. 24, 2020, Resp. at 6. “If the claim is owned by Dragul or GDA,” the claim is property of the Estate and subject to the Receiver’s sole control. *Id.* “If instead the claim is owned by YM Retail 07A, LLC, or its manager, Safeway Marketplace Manager 07, Inc., the Receiver abandoned the Estate’s interest in those entities long ago.” *Id.*

14. None of the claims asserted in the Nevada Action are brought by YM Retail 07 A, LLC or Safeway Marketplace Manager 07, Inc. Each is brought by Dragul, GDARES, GDAREM, and Rose. To the extent any of the claims asserted in the Nevada Action relate to the YM Property, they seek recovery on behalf of Dragul for harm he claims to have suffered in the representation. These claims, like all others asserted in the Nevada Action, are property of the Receivership Estate.

15. In a reply brief filed by Dragul on September 30, 2020, in connection with the First Abandonment Motion, Dragul took the position that his claims against BHFS and other law firms did not belong to the Estate because, according to Dragul, “claims for injuries Mr. Dragul personally suffered were never part of the Receivership Estate to begin with.” Sept. 30, 2020, Reply at 2 n.2. Dragul’s position is based on the argument that, according to the Receivership Order, only those of his claims and causes of action “related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities” are property of the Estate. *Id.* (quoting Receivership Order ¶ 9). Dragul is incorrect in both his interpretation of the Receivership Order and its application.

16. Under the Receivership Order, certain categories of assets of Dragul and the GDA Entities belong to the Estate without limitation; these include real and personal property, interests in subsidiaries, and all claims and causes of action. Receivership Order ¶ 9. In addition to these specific categories of assets, the Receivership Estate also includes any other “assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds.” *Id.* This limiting language applies only to the catch-all category of assets beyond those (like claims and causes of action) specifically enumerated as part of the Estate.

17. In any event, Dragul’s argument that his claims do not belong to the Receivership Estate—because the claims would be paid by the defendants he sues—focuses entirely on the language about assets being “derived from investor funds,” ignoring the fact that assets “related in any manner” to investor funds or the solicitation or sale of securities are also included in the Estate. As the Nevada Complaint shows, all of the claims Dragul has asserted against BHFS are related to his solicitation of investments. Thus, even under Dragul’s erroneously narrow interpretation of the Receivership Order, the claims asserted in the Nevada Action would still belong to the Estate as they relate to Dragul’s dealings with investors.

### **III. The Settlement Agreement is in the best interest of the Estate and its creditors.**

18. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver’s settlement

agreement. In analogous bankruptcy contexts, courts consider whether “the settlement is fair and equitable and in the best interests of the estate.” In considering whether to approve a settlement, bankruptcy courts consider four primary factors: “the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.” *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

19. Considering these factors, the Court should approve the Settlement Agreement. The Receiver has investigated the claims asserted in the Nevada Complaint, and, based upon his review of the Nevada Complaint and familiarity with the GDA records and information in his possession, believes they are not factually supported, not meritorious, and subject to several strong, and potentially insurmountable, defenses.

20. First, it appears the claims asserted in the Nevada Complaint are barred by applicable statutes of limitations. As Dragul himself conceded when he unsuccessfully asked the Receiver’s counsel for permission to deem the claims against Brownstein abandoned, “some of these claims are likely time-barred as to the Receiver,” the entity that has exclusive possession over these claims. First

Abandonment Mot. Ex. 1, at p. 7. In truth, the claims in the Nevada Complaint pertain to transactions that concluded many years ago (the latest in April 2016), and into which the Colorado Securities Commissioner and the Colorado Attorney General began investigations in 2014. As a result, it appears that all of the claims are time-barred. In fact, based on the Receiver's understanding of the claims and purported wrongdoing, the claims appear to have lapsed prior even to the appointment of the Receiver in August 2018.

21. Beyond that, the Receiver does not believe the claims are factually or legally substantiated. The Receiver is not aware of any facts indicating BHFS, or any attorney or employee of BHFS, while employed by BHFS, committed malpractice against, received excessive fees or costs from, or breached any fiduciary duty owed to Dragul or any GDA entity. Nor is the Receiver aware of any facts indicating that BHFS represented Dragul personally in connection with any of the claims asserted in the Nevada Complaint.

22. This conclusion pertains equally to the claims asserted against the individual defendants, which the Nevada Complaint lumps together without any attempt to allege which particular individuals worked on which transactions underlying the alleged claims, let alone plead any facts alleging each of the individuals' purported negligence or breach of fiduciary duty. As a simple example to highlight the lack of merit of the purported claims, a number of the individual defendants named in the Nevada Complaint appear to be BHFS paralegals and other



employees—not attorneys—against whom the alleged malpractice and breach of fiduciary duty claims are improperly asserted under any analysis.

23. Furthermore, the asserted claims relate to Dragul’s improper operation of his businesses—the GDA Entities—and their investments, which are the subject of several securities actions proceeding against Dragul and the GDA Entities, including two Indictments by Colorado State Grand Juries, and this action by the Commissioner. As a result, the Receiver believes the purported claims are also subject to a variety of other defenses, including, but not limited to, *in pari delicto* and contributory negligence.

24. The Receiver has also had an opportunity to review BHFS’s draft motion to dismiss the Nevada Complaint, finds the arguments raised therein compelling, and believes a motion to dismiss the action would likely be successful.

25. In addition, the Receiver has independently investigated whether any other potential claims exist against BHFS. Based on his review of the documents and understanding of the facts, the Receiver does not believe there are any meritorious claims that could be raised against BHFS on behalf of the Estate.

26. On the other hand, resolving the asserted claims through litigation would be expensive. Based on his review of BHFS’s draft motion, the Receiver understands BHFS is well-prepared to mount a formidable defense of the purported claims. If the claims were to survive a motion to dismiss, the litigation, which involves claims stretching back over nearly a decade, would be fact-intensive and costly. The

mere fact of legal malpractice claims necessitates expert witness testimony, the cost of which would be borne by the Estate.

27. Even if the Receiver abandoned the claims asserted in the Nevada Complaint and the Nevada Action brought by Dragul and the GDA Entities were permitted to proceed, the Estate would still be subject to significant litigation expense as the Estate controls the GDA entities, its documents and witnesses. That burden has been augmented by Dragul's election to bring the action in Nevada, which, if the action proceeded past a motion to dismiss, would impose additional time and expenses on the Estate.

28. Balancing the likelihood of success of any potential claims against BHFS, including those identified in the Nevada Complaint, against the expense involved in litigating the claims through trial, including expert witness testimony, the Receiver believes the proposed settlement is in the best interest of the Estate. The proposed Settlement Agreement resolves the potential litigation claims against BHFS without further expense or litigation risk, eliminates potentially significant litigation costs for the Estate, including costs that would be imposed on the Estate even if Receiver abandoned the claims, and results in the prompt payment of funds to the Estate.

**IV. Dragul and the GDA Entities should be enjoined from prosecuting the Nevada Action.**

29. Because the claims asserted in the Nevada Action are resolved through the Settlement Agreement, the Order approving the settlement should also enjoin Dragul from prosecuting that action.

30. In filing the Nevada Complaint and initiating that lawsuit, Dragul acted in an *ultra vires* manner, in violation of the Receivership Order’s appointment of the Receiver over those claims and causes of action, as well as in violation of the Receivership Order’s injunction against Dragul’s purporting to take actions on behalf of assets within the Estate. Receivership Order ¶¶ 9, 19(c). Dragul also filed the Nevada Action after asking the Court for permission to do so in the First Abandonment Motion and being denied such permission in the Court’s October 1, 2020, Order.

31. “Colorado courts have the power to enjoin a party from proceeding in an action in another jurisdiction. This power may be exercised when another action interferes unduly or inequitably with the progress of the local litigation.” *In re Marriage of Peper*, 554 P.2d 727, 730 (Colo. App. 1976) (citation omitted) (affirming “order directing [party] to dismiss [a] Pennsylvania civil action”); *see also O’Haire v. Burns*, 101 P. 755, 757 (Colo. 1909) (affirming restraining order enjoining plaintiff whose claim was dismissed in Colorado from prosecuting same claims against defendant in Iowa).

32. In order to prevent Dragul’s future disregard of this Court’s orders after these claims are resolved, the Order approving the Settlement Agreement should expressly enjoin Dragul from prosecuting the Nevada Action and order him to dismiss that lawsuit, under penalty of contempt of court.

33. Pursuant to paragraph 34 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days

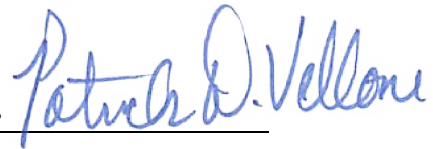
after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Settlement Agreement.

Dated: November 16, 2020

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.

By: /s/ Patrick D. Vellone



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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH BROWNSTEIN HYATT FARBER SCHRECK, LLP** via CCE to:

Robert W. Finke  
Janna K. Fischer  
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***Counsel for David S. Cheval, Acting    Counsel for Defendant Gary Dragul  
Securities Commissioner***

**CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS**

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

*/s/Christina A. Clerihue*  
Allen Vellone Wolf Helfrich & Factor P.C.

## Settlement Agreement and Mutual Release

### I. Parties

DATE FILED: November 16, 2020 10:51 AM  
FILING ID: 6C5F1B2044576

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of the date last signed by a party below, by and between Brownstein Hyatt Farber Schreck, LLP ("BHFS") and Harvey Sender (the "Receiver"), as Receiver for Gary J. Dragul, an individual ("Dragul"), GDA Real Estate Services, LLC, a Colorado limited liability company ("GDARES"), GDA Real Estate Management, Inc., a Colorado corporation ("GDAREM"), and a number of related entities, including Rose, LLC, a Colorado limited liability company ("Rose") (the "Estate"). Dragul, GDARES, GDAREM, Rose, and all related entities are referred to as "Dragul and the GDA Entities"; BHFS and the Receiver are each a "Party," and jointly the "Parties."

### II. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the "Receivership Action"), entered a Stipulated Order Appointing Receiver ("Receivership Order") which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, and to investigate and pursue all claims and causes of action on behalf of the Estate, to the exclusion of Dragul and the GDA Entities.

C. Under the Receivership Order, Dragul and the GDA Entities are enjoined from acting or attempting to take any and all actions of any kind or nature on behalf of Dragul and the GDA Entities, without either permission from the Receiver or an order from the court.

D. On December 13, 2018, pursuant to a court order, the Receiver abandoned Dragul's 17.85% interest in the entity known as YM Retail 07 A, LLC and Dragul's management rights in the entity known as Safeway Marketplace Manager 07, Inc. (the "YM Abandonment"). YM Retail 07 A, LLC and Safeway Marketplace Manager 07, Inc. owned and managed real property located at 6460 East Yale Avenue in Denver, Colorado (the "YM Property").

E. On September 3, 2020, Dragul filed a motion in the Receivership Action seeking a determination that claims Dragul and the GDA Entities purport to hold against certain accountants, attorneys, and consultants, including BHFS, had been abandoned by the Receiver, such that Dragul and the GDA Entities could pursue them on their own behalf. On October 1, 2020, that motion was denied.



F. On October 7, 2020, Dragul, GDARES, GDAREM, and Rose filed a lawsuit in the Eighth Judicial District Court in Clark County, Nevada against BHFS and 41 current and former attorneys and paralegals at BHFS (Case No. A-20-822625-C) (the "Nevada Action"). The complaint filed in the Nevada Action (the "Nevada Complaint") asserts causes of action for malpractice, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and breach of fiduciary.

G. On October 26, 2020, Dragul filed a second motion in the Receivership Action seeking a determination that the claims asserted in the Nevada Action have been abandoned by the Receiver, such that Dragul and the GDA Entities can pursue them on their own behalf. The Receiver intends to oppose that motion.

H. BHFS denies all claims asserted in the Nevada Action, and denies any liability or wrongdoing in connection with, arising from or relating to its representation of Dragul and the GDA Entities.

I. The Receiver has reviewed the Nevada Complaint and believes all of the claims asserted in the Nevada Action by Dragul, GDARES, GDAREM, and Rose belong to and are property of the Estate.

J. Based upon his review of the Nevada Complaint and familiarity with the GDA records in his possession, the Receiver believes that all of the claims asserted in the Nevada Action are not factually supported, not meritorious, and subject to several affirmative defenses, including *in pari delicto* and the applicable statutes of limitations.

K. The Receiver is not aware of any facts indicating BHFS, or any attorney or employee of BHFS, while employed by BHFS, committed malpractice against, received excessive fees or costs from, or breached any fiduciary duty owed to Dragul or any GDA entity.

L. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all claims, including without limitation the claims asserted in the Nevada Action, and to avoid the burden and expense of litigation to resolve the claims asserted in the Nevada Action.

### III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The representations and recitals set forth above are true and correct and are made a part of this Agreement.

2. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court. The Receiver shall file a motion requesting approval of the Agreement by the Receivership Court and a proposed order approving the Agreement, each in a form to be agreed upon by BHFS. If this Agreement is challenged by anyone, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest and that the claims released by the Receiver are property of the Estate and will not oppose any attempt by BHFS to file a brief or to be heard in support of the motion to approve the Agreement without the need for formal intervention in the Receivership Action. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

3. Effective Date. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.

4. Settlement Payment. Within 10 days after the Effective Date, BHFS shall pay the Estate \$250,000.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver.

6. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, the Receiver on behalf of the Estate releases and forever discharges BHFS and its representatives and agents, including all current and former shareholders, associates, and other employees of BHFS, from any and all claims, causes of action, manner of actions, debts, suits, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, damages, losses, attorneys' fees, costs and expenses, and demands whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity, arising out of or relating in any manner to the Estate, Dragul and the GDA Entities and their principals, subsidiaries, affiliates, successors, predecessors, agents, assigns, attorneys, and employees, including but not limited to all claims that were or could have been asserted in the Nevada Action.

b) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, BHFS, for itself, its predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under it, releases and forever discharges the Receiver and the Estate from any and all claims which were or could have been asserted as of the date this Agreement is executed, including but not limited to any outstanding fees and costs owed to BHFS by the Estate.



c) Notwithstanding anything to the contrary in Section 6(a), the Receiver is not releasing the claims asserted against former BHFS attorney Benjamin Kahn ("Kahn") in *Harvey Sender v. Gary Dragul, et al.*, Case No. 2020CV30255 Denver County District Court. The Receiver represents that all claims asserted against Kahn in that action are predicated on conduct by Kahn after his departure from BHFS on or about August 31, 2012. The release in Section 6(a) extends to any conduct by Kahn before his departure from BHFS.

d) Notwithstanding anything to the contrary in Section 6(a), the Parties acknowledge that the Receiver is not releasing any claims that it previously abandoned as a result of the YM Abandonment.

7. Further Cooperation. The Parties acknowledge that it is their intention, in resolving all claims between the Estate and BHFS, that the Nevada Action be dismissed. To the extent this Agreement is approved by the Receivership Court but the Nevada Action is not dismissed, the Receiver agrees to provide such assistance to BHFS as is reasonably necessary to defend against the Nevada Action and any subsequently filed actions purporting to assert the claims asserted in the Nevada Action.

8. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered into to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.

9. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

10. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, based upon or arising out of this Agreement.

11. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred or hypothecated any claim or interest identified herein.



12. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their legal representatives, successors and assigns, whether by operation of law or otherwise.

13. Controlling Law. This Agreement is made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado's law on conflicts of law.

14. Severability. If, after court approval of this Agreement pursuant to Section 2, any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable.

15. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

16. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with counsel with respect to this Agreement and all matters covered by and relating to it.

17. No Waiver of Breaches of Agreement. The failure by a Party to insist on strict compliance with any of the covenants or restrictions in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.

18. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

19. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.



21. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement an as of the date first above written.

RECEIVER



Harvey Sender

Dated: 11/13/20

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP



By: Jonathan Pray  
Its: General Counsel

Dated: 11/13/20