

DISTRICT COURT, DENVER COUNTY,
STATE OF COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202

Plaintiffs: HARVEY SENDER, AS
RECEIVER FOR GARY DRAGUL;
GDA REAL ESTATE SERVICES,
LLC; AND GDA REAL ESTATE
MANAGEMENT, LLC

vs.

Defendants: GARY 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; JOHN
AND JANE DOES 1-10; and XYZ
CORPORATIONS 1-10

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and Marlin Hershey*

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Case Number: 20CV30255

Courtroom: 414

**UNOPPOSED JOINT MOTION OF DEFENDANTS MARLIN S. HERSHEY,
PERFORMANCE HOLDINGS, INC., AND GARY DRAGUL FOR ENLARGEMENT OF
TIME TO FILE REPLIES IN SUPPORT OF MOTION FOR CERTIFICATION OF
INTERLOCUTORY APPEAL UNDER C.A.R. 4.2(a) PURSUANT TO C.R.S. § 13-4-
102.1(1)**

Defendants Marlin S. Hershey, Performance Holdings, Inc., and Gary Dragul (collectively, “Movants”), each through his/its respective counsel, file their Unopposed Joint Motion for Enlargement of Time to File Replies in Support of Motion for Certification of Interlocutory Appeal Under C.A.R. 4.2(a) Pursuant to C.R.S. § 13-4-102.1(1) and, in support thereof, respectfully set forth as follows:

C.R.C.P. 121, § 1-15(8) CERTIFICATION

The undersigned certify that 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.

C.R.C.P. 121, § 1-11 CERTIFICATION

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

1. On November 12, 2020, Movants filed their Motion for Certification of Interlocutory Appeal Under C.A.R. 4.2(a) Pursuant to C.R.S. § 13-4-102.1(1) pursuant to which they seek certification to appeal the dispositive legal issue of the Receiver’s standing to pursue claims on behalf of creditors of the receivership estate. On that same day, Defendant Gary Dragul also separately filed his Motion for Certification of Interlocutory Appeal of Unique Issue Under C.A.R. 4.2(a) Pursuant to C.R.S. § 13-4-102.1(1) seeking certification to appeal the dispositive legal issue of whether the Receiver can assert claims against an individual who is part of the receivership estate.

2. The Receiver responded to the Motions for Certification on December 17, 2020. Accordingly, the Movants’ deadline to file their replies in support of the Motions for

Certification is December 24, 2020.

3. 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. Here, due to personal conflicts and commitments relating to the imminent holiday, the Movants seek an enlargement of time of one week to file their replies in support of the Motions for Certification.

4. The requested enlargement of time will not interfere with any current settings or deadlines as none exist at this point in the case.

5. The Receiver has agreed to the requested enlargement of time and will not be prejudiced. Further, the requested enlargement of time is not sought for an improper purpose or to unnecessarily delay this action.

6. With respect to the Motions for Certification, Movants have neither requested nor received any other extensions of time.

WHEREFORE, Movants respectfully request that the Court enter an order granting them an enlargement of time of seven (7) days to file their replies in supports of the Motions for Certification and provide such other and further relief to which Movants may be justly entitled. Respectfully submitted this 23rd day of December 2020.

By: /s/Paul M. Grant
Paul M. Grant

Attorneys for Performance Holdings, Inc. and Marlin Hershey

By: /s/Christopher S. Mills
Christopher S. Mills

Attorneys for Gary Dragul

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via Colorado Courts E-Filing on this 23rd day of December 2020:

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/s/Paul M. Grant

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