

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>	
Attorneys for Brownstein Hyatt Farber Schreck, LLP:  Richard B. Benenson, #32566 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1100 Fax: 303.223.1111 Emails: rbenenson@bhfs.com  Bart H. Williams, CA 134009, <i>pro hac vice pending</i> Jennifer L. Roche, CA 254538, <i>pro hac vice pending</i> Shawn S. Ledingham Jr., CA 275628, <i>pro hac vice pending</i> PROSKAUER ROSE LLP 2029 Century Park East, 24th Floor Los Angeles, CA 90067 Phone: 310. 557.2900 Emails: bwilliams@proskauer.com; jroche@proskauer.com; sledingham@proskauer.com	Case Number: 2018CV33011  Div/Ctrm: 424
<b>BROWNSTEIN HYATT FARBER SCHRECK, LLP BRIEF IN SUPPORT OF          RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT</b>	

Brownstein Hyatt Farber Schreck, LLP joins in the Receiver’s<sup>1</sup> Motion to Approve Settlement Agreement with Brownstein Hyatt Farber Schreck, LLP, filed

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<sup>1</sup> Unless separately defined herein, capitalized terms in this Brief have the definitions provided in the Receiver’s Motion to Approve Settlement.

on November 16, 2020 (“Motion to Approve Settlement”), and submits this brief in support thereof.

### **INTRODUCTION**

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”). *See* Complaint (attached as Exhibit 2 to Dragul’s October 26, 2020 Second Abandonment Motion) (the “Nevada Complaint”). The filing of the Nevada Action followed closely on the heels of this Court’s October 1, 2020 Order denying Dragul permission to file such lawsuit on behalf of himself or the GDA Entities.<sup>2</sup>

After the Nevada Action was initiated, counsel for the Receiver contacted counsel for BHFS to discuss the possibility of settling all of the purported claims belonging to Dragul and his related entities, including but not limited to the claims asserted in the Nevada Action (“Claims”). After arms-length discussions and multiple rounds of negotiation, to avoid the cost of defending the meritless claims, BHFS entered into the settlement agreement with the Receiver attached to the Motion to Approve Settlement.

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<sup>2</sup> As Dragul and the GDA Entities are resident in Colorado, BHFS is headquartered in Colorado, and BHFS’s representation of Dragul and the GDA Entities related most significantly to Colorado, Dragul presumably filed the action in Nevada rather than Colorado to circumvent this Court’s ruling.

At the invitation of the Court, BHFS submits this Brief regarding the Motion to Approve Settlement. BHFS joins in the arguments set forth in the Motion to Approve Settlement and Reply in support of that motion and provides additional argument and information, as follows.

## **ARGUMENT**

### **I. JOINDER IN ARGUMENT RE SCOPE OF RECEIVERSHIP ESTATE**

Regarding the scope of the Receivership Estate under the Receivership Order, BHFS joins in the Receiver's arguments and agrees with both a) the Receiver's interpretation of the Receivership Order as including Dragul's claims in the Estate and b) the Receiver's conclusion that, even under Dragul's interpretation of the order, the claims asserted in the Nevada Action are related to (and indeed, entirely premised upon) Dragul's dealings with investors. The Receiver has more than adequately briefed these issues in the Motion to Approve Settlement and Reply in support of that motion.

### **II. DRAGUL'S CLAIMS CANNOT SUCCEED**

The Claims asserted by Dragul and the GDA Entities have no merit. Numerous factual and legal issues infect the Nevada Complaint, would preclude Dragul from prevailing against BHFS if any action against it were permitted to proceed, and support approval of the Settlement Agreement.

#### **A. The Claims are Altogether without Merit.**

The Nevada Action arises out of multiple indictments and civil actions against Dragul and the GDA Entities concerning their alleged malfeasance and investor fraud. The Nevada Complaint alleges legal malpractice against BHFS,

premised on the false notion that BHFS is responsible for the irregular business activities of Dragul and the GDA Entities, about which the firm had no contemporaneous knowledge. While BHFS advised the GDA Entities<sup>3</sup> with respect to the purchase and sale of certain real estate and business interests, it was not involved in and did not provide advice on the aspects of Dragul's businesses or Dragul's conduct that led to the government's investigations or actions against Dragul and the GDA Entities, such as the issuance of promissory notes to investors. These defects in the merits of Dragul's claims would be subject to summary judgment.

The remaining allegations, like the breach of fiduciary duty claim concerning the YM Property, for example, may be disposed of by a motion to dismiss, based on judicially noticeable facts. The Nevada Complaint alleges a breach of fiduciary duty claim arising solely from a settlement agreement Dragul and the GDA Entities entered into in January 2014 with the Colorado Department of Public Health & Environment for remediation of the YM Property. *See* Nev. Compl. ¶¶ 49-50. Dragul claims he was "personally obligated to pay for all the costs of the cleanup of the contamination on the YM Property." Nev. Compl. ¶ 49. And, he alleges the settlement "did not result in any liability for YM Retail or any of its members."

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<sup>3</sup> BHFS represented Dragul individually in limited instances unrelated to the transactions alleged in the Nevada Complaint, such as when he got into a dispute with the contractor who built Dragul's house. But BHFS represented the GDA Entities, and not Dragul personally, in connection with the transactions underlying the Claims in the Nevada Complaint. *See* Affidavit of Richard B. Benenson, ¶ 3 (attached hereto as Exhibit 1).

Nev. Compl. ¶ 50. The publicly filed settlement agreement with CDPHE reveals the opposite, however—namely that all of the defendant parties, including YM Retail, were jointly and severally liable for the obligations under the settlement. *See* Ex. 2 at ¶ 9, CDPHE Settlement Agreement.

The Nevada Complaint is also larded with other conclusory allegations that would not withstand a motion to dismiss. As one example, Dragul appears to have sued nearly every attorney or employee ever to have appeared on BHFS’s invoices, without alleging any particular attorneys worked on the transactions alleged, let alone pleading the facts of each attorney’s purported negligence or breach of the attorney’s fiduciary duty. These allegations are insufficient to state a claim against the individual defendants and the claims against them should be dismissed. *Giduck v. Niblet*, 408 P.3d 856 (Colo. Ct. App. 2014) (amended complaint was properly dismissed because it did not “tie[] any particular defendant to any of the [] claims” and failed “to specify which defendant did what”) (collecting cases). Moreover, the legal malpractice and fiduciary duty claims asserted against the several non-attorneys named as defendants fail as a matter of law. Accordingly, Dragul’s counsel’s statement that the Nevada Complaint was “thoroughly researched” (Dragul’s Obj. at 13) should be given no credence.

**B. The Claims are Time-Barred and Subject to Additional Defenses.**

The Claims are also barred by the applicable statutes of limitations. The breach of fiduciary duty claim alleged in the Nevada Complaint concerns the January 2014 settlement agreement with the Colorado Department of Public

Health & Environment. Nev. Compl. ¶¶ 49-50. The alleged claim was time-barred as of 2018 at the latest. Colo. Stat. § 13-80-101(1)(f) (three year statute of limitations for breach of fiduciary duty claims).<sup>4</sup>

The Nevada Complaint also alleges a legal malpractice claim concerning promissory notes Dragul issued in or around 2013 that purportedly gave rise to Dragul's 2018 Indictment, and concerning several real estate transactions underlying an August 15, 2018 action by the Colorado Securities Commissioner and a 2019 Indictment by the State. The latest of the transactions alleged by Dragul concerns an April 1, 2016 investment in the Plaza Mall of Georgia North. Nev. Compl. ¶¶ 77-129. However, Dragul and the GDA Entities claim the government's investigation was prompted by a 2012 meeting with the State of Colorado at which they were represented by BHFS, and admit their "business operations" were under investigation by the State no later than March 10, 2014. Nev. Compl. ¶¶ 45-48, 58. Beginning in 2014, Dragul and the GDA Entities were served with subpoenas in connection with the regulatory investigation and were required to engage legal counsel. Nev. Compl. ¶¶ 58, 81. Dragul was on notice of the purported malpractice claims years ago, and the statute of limitations lapsed before the Receivership Order was even entered. *Torrez v. Edwards*, 107 P.3d 1110, 1113 (Colo. Ct. App.

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<sup>4</sup> The Nevada Complaint alleges the settlement was executed in January 2014. Nev. Compl. ¶ 49. In truth, it was executed in January 2015. See Ex. 2 at 4, CDPHE Settlement Agreement. This factual error is irrelevant for statute of limitations purposes, as both 2014 and 2015 are well outside the three-year limitations period.

2004) (applying two-year negligence statute of limitations to legal malpractice claims, Colo. Stat. § 13-80-102(1)).

Dragul's claims regarding BHFS's billing practices are likewise time-barred. Any purported claims regarding billing irregularities accrued when Dragul and the GDA Entities received the invoices for BHFS's representation, the latest transaction alleged occurred in 2016, and so these claims were time-barred as of 2018. *Torrez*, 107 P.3d at 1113 (where a lawyer's client asserts contractual claims not for breach of a specific provision, but for violation of general duties to the client, the claim is premised upon legal malpractice and subject to the applicable two-year limitations period). Even if Dragul could sufficiently allege billing-related claims for BHFS's representation subsequent to those transactions, such claims would also have accrued at the time the invoices were issued. By April 2018, the first criminal indictment had been issued. Any purported billing claims, which could represent only a small fraction of the \$7,000,000 in legal fees Dragul alleges were incurred over a 20-year period, would have been time-barred by April 2020.

The Nevada Complaint is further subject to variety of other defenses, including *in pari delicto* and contributory negligence. Colorado has long recognized that "when the parties are in *pari delicto*, the law will aid neither." *Italian-American Bank of Denver v. Lepore*, 79 Colo. 466, 470 (1926) (collecting cases); *see also Scognamillo v. Olsen*, 795 P.2d 1357 (Colo. App. 1990) (recognizing defense of contributory negligence in legal malpractice claims). The doctrines are particularly apt here, where Dragul attempts to shift his responsibility for operating a Ponzi

scheme onto his professionals. The Nevada Complaint makes vague references to BHFS's purported failure to appropriately advise Dragul and the GDA Entities regarding the scope of required disclosures in connection with certain transactions (at the same time lauding BHFS for its thoroughness in connection with other transactions). The indictments, however, reveal Dragul's own active fraud concerning the crumbling financial condition of his businesses and their inability, and ultimate failure, to repay investors Dragul solicited, Dragul's commingling of funds across investments in order to meet the GDA Entities' operating costs, and Dragul's misappropriation of investor funds to pay for his and his family's personal expenses.

Dragul's own malfeasance is a preclusive hurdle to the purported claims. Responding to the Receiver's arguments regarding the application of *in pari delicto*, Dragul suggests that the doctrine is inapplicable where the "victim" of the misconduct is someone other than the plaintiff in the lawsuit. But Dragul cites no case stating the rule in this manner. Dragul's Obj. at 11. To the contrary, examples abound where *in pari delicto* was used as a complete bar to claims brought against the attorneys of individuals or entities accused of defrauding investors. For example, in *Mosier v. Callister, Nebeker & McCullough*, the Tenth Circuit granted summary judgment in favor of a law firm accused of "fail[ing] to counsel [its client] to cease its operations or otherwise explain that [it] was operating as an illegal Ponzi scheme." 546 F.3d 1271, 1276 (10th Cir. 2008); *see also In re Dublin Securities, Inc.*, 133 F.3d 377, 380 (6th Cir. 1997) (affirming dismissal of complaint



against debtor's attorneys where debtor's own actions constituted investor fraud). The absolute defense of *in pari delicto* applies, regardless of whether Dragul or the Receiver pursues the claims. *See Mosier*, 546 F.3d at 1276 (“[I]t is well established that *in pari delicto* may bar an action by a bankruptcy trustee against third parties who participated in or facilitated wrongful conduct of the debtor.”). If Dragul defrauded his investors, neither he nor the Receiver may shift responsibility for such conduct onto GDA's outside counsel.

**C. Dragul's Objections to the Settlement are Unavailing.**

Dragul's objections to the Settlement Agreement are not compelling. Rather than address any of the defects of his Claims directly, he argues the Claims are being settled for a fraction of the dollar amount attributed to them in the Nevada Complaint. Allegations are neither facts nor evidence. Dragul's failure to respond to the defects the Receiver identified only corroborates the lack of merit to Dragul's Claims, and that Dragul is relying on his inflammatory and demonstrably false allegations to carry the day.

Given the insurmountable substantive and procedural hurdles facing Dragul's Claims, the unjust attack on BHFS's competence and reputation, and the numerous defenses in BHFS's quiver, BHFS was prepared to defend to conclusion any action Dragul might pursue. *See Benenson Affid.* at ¶ 4. BHFS is confident it would have prevailed, whether on a motion to dismiss or at summary judgment. However, BHFS also understands the reality that litigation of these issues could be costly. Despite Dragul's feigned confusion at why BHFS would settle claims that were not meritorious, it is not uncommon to settle claims a party believes to lack

merit to avoid the costs of litigation. And, those costs would not be borne solely by BHFS. BHFS would pursue the necessary discovery, concerning transactions that occurred as long as a decade ago, which it anticipates would include discovery from the Receiver, regardless of whether the Receiver or Dragul was pursuing the purported Claims. *Id.*

BHFS steadfastly denies any liability with respect to its representation of Dragul and the GDA Entities, but, to avoid the time and expense of litigation, agreed to resolve the purported Claims with the Receiver, subject to this Court's approval.

### CONCLUSION

For the reasons described in the Motion to Approve Settlement, and those further described above, BHFS asks the Court to enter an Order approving the Settlement Agreement and enjoining Dragul from prosecuting the Nevada Action.

Dated: December 30, 2020

PROSKAUER ROSE LLP

By: 

ATTORNEYS FOR BROWNSTEIN HYATT  
FABRER SCHRECK, LLP

**BROWNSTEIN HYATT FABRER SCHRECK, LLP**

By: /s/ Richard B. Benenson  
**Richard B. Benenson, #32566**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of December, 2020, a true and correct copy of the foregoing **BROWNSTEIN HYATT FARBER SCHRECK, LLP BRIEF IN SUPPORT OF RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT** was filed with the Court and served via Colorado Courts E-Filing System on all counsel of record.

*s/Penny G. Lalonde*  
Penny G. Lalonde, Paralegal

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# Exhibit 1

## Affidavit of Richard B. Benenson



<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</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 Brownstein Hyatt Schreck Farber, LLP:</p> <p>Bart H. Williams, CA 134009, <i>pro hac vice pending</i> Jennifer L. Roche, CA 254538, <i>pro hac vice pending</i> Shawn S. Ledingham Jr., CA 275268, <i>pro hac vice pending</i> PROSKAUER ROSE LLP. 2029 Century Park East, 24<sup>th</sup> Floor Los Angeles, California 90067 Phone Number: (310) 557-2900 E-mail: bwilliams@proskauer.com E-mail: jroche@proskauer.com E-mail: sledingham@proskauer.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;"><b>AFFIDAVIT OF RICHARD B. BENENSON</b></p>	

I, Richard B. Benenson, swear and affirm as follows:

1. I am the managing partner of Brownstein Hyatt Schreck Farber, LLP (“BHFS”). I submit this declaration in support of BHFS’s Memorandum in support of Receiver’s Motion to Approve Settlement Brownstein Hyatt Schreck Farber, LLP. Unless otherwise indicated, I have personal knowledge of the matters stated herein.

2. I have reviewed the Complaint filed on October 7, 2020 by 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”) in the Eighth Judicial District Court

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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").


3. I am generally familiar with BHFS's representations of Dragul and the GDA Entities. Prior to the filing of the criminal and civil actions against Dragul, BHFS represented Dragul individually in limited instances unrelated to the transactions alleged in the Complaint, such as in litigation against the contractor that built his house. BHFS represented the GDA Entities, and not Dragul personally, in connection with the transactions alleged in the Complaint.

4. BHFS denies all claims asserted in the Nevada Action, and denies any liability or wrongdoing in connection with, arising from, or relating to its representations of Dragul and the GDA Entities. Had the Receiver not settled the claims, BHFS was prepared and intended to defend to conclusion any action Dragul or the GDA Entities pursued against BHFS. BHFS's defense would have necessitated pursuing all relevant discovery concerning transactions that occurred as long as a decade ago, which would have included discovery from the Receiver regardless of whether the Receiver or Dragul was pursuing the purported claims against BHFS.

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

12/31/2020

Executed on December \_\_, 2020, at \_\_\_\_\_, Colorado.

By:  Signed on 2020/12/31 07:14:49 -8:00  
Richard B. Benenson

The foregoing instrument was acknowledged before me this 31st day of December, 2020 by Richard B. Benenson.

**YAJAIRA LOZANO**  
NOTARY PUBLIC  
STATE OF NEVADA  
Commission # 18-2648-1  
My Appt. Expires May 25, 2022

Notary Stamp 2020/12/31 08:14:49 PST - Notarial act performed by means of audio video communication DB180962COAF

 Signed on 2020/12/31 07:14:49 -8:00

Notary Public

STATE OF NEVADA  
COUNTY OF CLARK



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Exhibit 2  
CDPHE Settlement Agreement

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202	DATE FILED: January 20, 2015 CASE NUMBER: 2013CV33076  <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  v.  Defendants: YM RETAIL 07 A, LLC; GDA REAL ESTATE MANAGEMENT, INC; GDA REAL ESTATE SERVICES, LLC d/b/a THE GDA COMPANIES; GARY DRAGUL; AND AARON METZ	
<i>Attorneys for Defendants YM Retail 07 A, LLC and GDA Real Estate Management, Inc.</i>  Jonathan G. Pray, #36576 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202 Phone: 303.223.1100 Fax: 303.223-1111 Email: jpray@bhfs.com  <i>Attorneys for Defendants GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz</i>  Benjamin A. Kahn, #29073 Megan R. Kahn, #42093 The Conundrum Group, LLP Attorneys at Law P.O. Box 848 Salida, CO 81201 Phone Number 303-377-7890 Fax: 888-788-4457 Email: ben@conundrumlaw.com megan@conundrumlaw.com	Case Number: 2013CV33076  (previously consolidated with 2013CV34476)  Division: 203
<b>STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT</b>	

This Stipulation Regarding Parties' Settlement Agreement (the "Stipulation") is made by and between Defendants YM Retail 07 A, LLC, GDA Real Estate Management, Inc., GDA Real Estate Services, LLC, Gary Dragul and Aaron Metz (collectively, "Defendants"), and the Colorado Department of Public Health and Environment ("CDPHE"). Defendants and CDPHE are collectively referred to herein as the "Parties," and each individually as a "Party."



1. YM Retail 07 A, LLC (“Owner”) is the owner of that certain real property described in Exhibit A to the Receivership Order, as that term is defined below (the “Property”).

2. Brian J. Baker (“Receiver”) is acting as the court-appointed receiver of the Property pursuant to that certain Order Granting Ex Parte Verified Motion for Appointment of Receiver dated on or about October 17, 2013 by the Denver District Court (the “Receivership Order”) issued in the litigation styled as MLMT 2005-LC1 Yale Retail, LLC v. YM Retail 07 A, LLC, Case No. 2013-CV-34476 (the “Receivership Litigation”).

3. The Receiver believes that the environmental remediation of the Property set forth below will enhance the value of the Property in an amount in excess of the costs of performing such work. The Receiver therefore believes that the settlement described below is in the best interests of the Receivership Estate, and the Receiver is willing to perform according to the terms set out below.

4. Defendants shall cause remedial work to be performed at the Property sufficient to bring the Property into compliance with the Colorado Hazardous Waste Act., C.R.S. § 25-15-101 *et seq.*, the Colorado Hazardous Waste Regulations, 6 C.C.R. 1007-3, the Colorado Basic Standards for Groundwater, 5 C.C.R. 1002-41, and other applicable state laws and regulations pertaining to environmental pollution (the “Work”).

5. Defendants and the Receiver have estimated that the cost of the Work will be between \$126,540 and \$252,200.

6. Beginning in January, 2015, Defendants shall collectively make eight monthly payments to an escrow account the (“Escrow”) held by a third party escrow company in the amount of \$12,500, for a total of \$100,000 (the “Defendant’s Contribution”).

7. The Receiver shall deposit \$150,000 in the Escrow on August 3, 2015 (the “Receiver Contribution”).

8. FUNDING OF THE WORK.

a. The “Cost of the Work” shall mean all out-of-pocket costs paid to third-party contractors and environmental consultants hired by Defendants to complete the Work (collectively, the “Contractors”).

b. Defendants shall be responsible for paying the Cost of the Work to the Contractors. Defendants shall hire and supervise Casey Resources, Inc. (“Casey”) or another environmental contractor mutually agreeable to the Parties to bid and supervise the Work. The Receiver shall be entitled to review and promptly comment on all communications between Defendants and Casey and between Defendants and CDPHE relating to the performance of the Work.

c. In the event that the Cost of the Work is less than \$250,000, Defendants and the Receiver will cause the difference between \$250,000 and the Cost of the Work to be released from the Escrow to the Owner and Receiver in proportionate shares based on their respective contributions upon receipt of a “no action letter” or equivalent.

d. In the event that the Cost of the Work is in excess of \$250,000, Defendants shall be solely responsible for any such excess.

9. Defendants shall cause the Work to be commenced on or before August 3, 2015. Defendants are jointly and severally liable for performing the Work. The Receiver shall cause Defendants and the Contractors to be granted access to the Property for the purposes of completing the Work. Defendants and the Receiver shall enter into such other contracts, agreements, and stipulations as are necessary to effect the purposes of this Stipulation.

10. To facilitate the Receiver’s Contribution, the Parties request that Paragraph 24 of the Receivership Order be modified to allow the Receiver to retain the amount necessary to fund the Receiver’s Contribution, in addition to the amounts up to \$20,000 that the Receiver may currently retain.

11. Defendants confess liability for a civil penalty in the amount of \$62,500, which shall be paid to CDPHE’s Hazardous Materials & Waste Management Division in five monthly installments of \$12,500, beginning on September 1, 2015.

12. Nothing in this Stipulation shall be construed to alter, affect, or modify Defendants’ rights, if any, against the plaintiff in the Receivership Litigation (the “Lender”) or the Lender’s rights, if any, against Defendants in any proceeding or under the Promissory Note and other loan documents more specifically described in the Receivership Order.

13. Each Party shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Stipulation.

14. SCOPE AND EFFECT OF AGREEMENT

a. Upon Court approval, this Stipulation shall be binding upon the Parties, the Receiver, and their successors and assigns.

b. This Stipulation shall remain an enforceable Order of the Court until the Court determines, in response to a petition by any Party, that all requirements of the Stipulation have been satisfied.

c. Until termination of this Stipulation and satisfaction of Defendants’ obligations under the Stipulation, this Court shall retain jurisdiction over both the subject matter of this Stipulation and the Parties.

d. Defendants’ non-compliance with the terms of this Stipulation shall be enforceable by a contempt action before the Court.

e. Upon Defendants' full compliance with this Stipulation, the Division shall stipulate to a dismissal of this case.

15. SIGNATORIES

a. Each undersigned representative of a Party to this Stipulation certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind such Party to this document.

b. The Parties enter into this Stipulation and submit it to the Court for approval and entry as an Order of the Court, on this 19<sup>th</sup> day of January, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: s/Jonathan G. Pray

Jonathan G. Pray, #36576  
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Attorneys for Defendants YM Retail 07 A, LLC and  
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THE CONUNDRUM GROUP, LLP ATTORNEYS AT LAW

By: s/Benjamin A. Kahn

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Dragul and Aaron Metz

CYNTHIA H. COFFMAN  
ATTORNEY GENERAL

By: s/David E. Kreutzer

David E. Kreutzer, #18873  
Jason E. King, #34376\*  
Senior Assistant Attorneys General  
Hazardous & Solid Waste Unit  
Natural Resources and Environment Section  
Attorneys for Plaintiff  
\*Counsel of Record

Undersigned counsel for the Receiver confirms and represents that the statements attributed above to the Receiver are true and correct.

TEMKIN WIELGA & HARDT LLP

By: s/Brad W. Schacht

Brad W. Schacht, # 18974  
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Denver, Colorado 80202  
Phone: 303-292-4922  
Email: temkin@twlaw.com

Attorneys for Brian J. Baker

SO ORDERED this 20<sup>th</sup> day of January, 2015. The Defendants, CDPHE, and the Receiver shall proceed according to the terms set out above.

BY THE COURT:



John W. Madden, IV  
District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of January, 2015, I electronically filed a true and correct copy of the **STIPULATION AND PROPOSED ORDER REGARDING PARTIES' SETTLEMENT AGREEMENT** with the clerk of Court using the Colorado ICCES system which will send notification of such filing and service upon the following counsel of record:

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s/Penny G. Lalonde  
Penny G. Lalonde, Paralegal

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>Attorneys for Brownstein Hyatt Farber Schreck, LLP:</p> <p>Richard B. Benenson, #32566          BROWNSTEIN HYATT FARBER SCHRECK, LLP          410 Seventeenth Street, Suite 2200          Denver, CO 80202-4432          Phone: 303.223.1100          Fax: 303.223.1111          Emails: rbenenson@bhfs.com</p> <p>Bart H. Williams, CA 134009, <i>pro hac vice pending</i>          Jennifer L. Roche, CA 254538, <i>pro hac vice pending</i>          Shawn S. Ledingham Jr., CA 275268, <i>pro hac vice pending</i>          PROSKAUER ROSE LLP          2029 Century Park East, 24th Floor          Los Angeles, CA 90067          Phone: 310. 557.2900          Emails: bwilliams@proskauer.com;          jroche@proskauer.com; sledingham@proskauer.com</p>	<p>Case Number: 2018CV33011</p> <p>Div/Ctrm: 424</p>

**VERIFIED MOTION OF BART H. WILLIAMS FOR PRO HAC VICE ADMISSION**

Pursuant to C.R.C.P. 121 § 1-2 and C.R.C.P. 205.3, Bart H. Williams of Proskauer Rose LLP hereby moves for *pro hac vice* admission to appear before this Court in the above-captioned matter. As grounds for this motion, Mr. Williams states the following:

- Under Rule 205.3, an attorney in good standing from any other jurisdiction in the United States may, in the discretion of a Colorado court of record, be permitted to participate



before the Court in a trial, argument and other proceeding in a matter in which the attorney is employed, provided that a member in good standing of the Bar of the State of Colorado is associated in such cause at all stages of the case.

2. Mr. Williams is a partner in the law firm of Proskauer Rose LLP and practices in the firm's Los Angeles, California office. Mr. Williams is a member in good standing of the State Bar of California and is assigned attorney registration or bar admission number 134009 in the State of California.

3. Mr. Williams is also admitted in the following additional jurisdictions: U.S. Courts of Appeals for the Second and Ninth Circuits, and U.S. District Courts for the Central, Southern, and Eastern Districts of California, the Southern District of New York, and the Eastern District of Michigan.

4. Mr. Williams has not previously sought *pro hac vice* admission in Colorado.

5. Mr. Williams is in good standing in all bars to which he is admitted, and he has not been subject to any order of discipline or disability by any bar, or had any request for *pro hac vice* admission denied or revoked.

6. Mr. Williams is co-counsel for Brownstein Hyatt Farber Schreck, LLP ("BHFS") in the above-referenced action, and he has notified BHFS of the filing of this Verified Motion.

7. Mr. Williams acknowledges that he is subject to all applicable provisions of the Colorado Rules of Professional Conduct, the Colorado Rules of Civil Procedure and other court rules, that he will follow those rules throughout the *pro hac vice* admission, and that this Verified Motion complies with those rules.

8. Richard B. Benenson, #32566, is a member in good standing of the Bar of the State of Colorado.



9. Mr. Benenson will be present and participate in a meaningful and substantial manner throughout the proceedings and trial of this matter.

10. Mr. Williams has filed a copy of this motion with the Clerk of the Colorado Supreme Court at the Office of Attorney Registration, 1300 Broadway, Suite 510, Denver, Colorado 80203 and paid the required fee.

11. By execution of the attached verification, Mr. Williams attests that the facts stated in this motion are true and correct.

12. By execution of the attached verification, Mr. Benenson verifies Mr. Williams's association on this matter.

WHEREFORE, Bart H. Williams respectfully requests that the Court admit him *pro hac vice* to appear before the Court in this case.

DATED this 30th day of December, 2020.

PROSKAUER ROSE LLP

*Original signature on file at offices of Proskauer Rose LLP  
pursuant to C.R.C.P. 121 § 1-26*

By: s/ Bart H. Williams  
Bart H. Williams, CA 134009

and

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

*Original signature on file at offices of Brownstein Hyatt  
Farber Schreck pursuant to C.R.C.P. 121 § 1-26*

By: s/ Richard B. Benenson  
Richard B. Benenson, #32566





**VERIFICATION OF BART H. WILLIAMS**

I Bart H. Williams, hereby swear or affirm that the statements made in the VERIFIED MOTION OF BART H. WILLIAMS FOR PRO HAC VICE ADMISSION are true and correct to the best of my knowledge.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

*Bart H. Williams*

Bart H. Williams

Subscribed and sworn to before me by Bart H. Williams, this 30th day of December 2020.

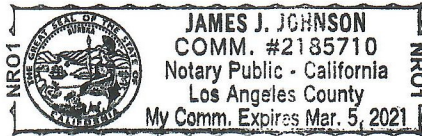
*James J. Johnson*  
Notary Public

State of California

County of: Los Angeles

My Commission Expires: 03-05-2021

[SEAL]



**VERIFICATION OF RICHARD B. BENENSON**

I Richard B. Benenson, hereby verify the association of Bart H. Williams with Brownstein Hyatt Farber Schreck, LLP in the litigation styled as *Chan v. Dragul, et al.*, Denver District Court Case No. 2018CV33011.



Signed on 2020/12/31 07:14:49 -8:00

Richard B. Benenson

Subscribed and sworn to before me by Richard B. Benenson, this 31st day of December 2020.



Signed on 2020/12/31 07:14:49 -8:00

Notary Public

State of Nevada

County of: Clark

My Commission Expires: May 25, 2022

[SEAL]



**CERTIFICATE OF SERVICE**

I hereby certify pursuant to C.R.C.P. 205.3(2)(b)(vii) that on this 31st day of December 2020:

- I electronically filed the foregoing **VERIFIED MOTION OF BART H. WILLIAMS FOR PRO HAC VICE ADMISSION** via the Colorado Courts E-Filing System, which will send notification and service upon all counsel of record; and
- I provided Brownstein Hyatt Farber Schreck, LLP with a copy of the foregoing **VERIFIED MOTION OF BART H. WILLIAMS FOR PRO HAC VICE ADMISSION** via electronic mail.

*/s/ Penny G. Lalonde* \_\_\_\_\_  
Penny G. Lalonde, Paralegal



DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>Attorneys for Brownstein Hyatt Farber Schreck, LLP:</p> <p>Richard B. Benenson, #32566          BROWNSTEIN HYATT FARBER SCHRECK, LLP          410 Seventeenth Street, Suite 2200          Denver, CO 80202-4432          Phone: 303.223.1100          Fax: 303.223.1111          Emails: rbenenson@bhfs.com</p> <p>Bart H. Williams, CA 134009, <i>pro hac vice pending</i>          Jennifer L. Roche, CA 254538, <i>pro hac vice pending</i>          Shawn S. Ledingham Jr., CA 275268, <i>pro hac vice pending</i>          PROSKAUER ROSE LLP          2029 Century Park East, 24th Floor          Los Angeles, CA 90067          Phone: 310. 557.2900          Emails: bwilliams@proskauer.com;          jroche@proskauer.com; sledingham@proskauer.com</p>	<p>Case Number: 2018CV33011</p> <p>Div/Ctrm: 424</p>
<p><b>VERIFIED MOTION OF SHAWN S. LEDINGHAM, JR.          FOR PRO HAC VICE ADMISSION</b></p>	

Pursuant to C.R.C.P. 121 § 1-2 and C.R.C.P. 205.3, Shawn S. Ledingham, Jr. of Proskauer Rose LLP hereby moves for *pro hac vice* admission to appear before this Court in the above-captioned matter. As grounds for this motion, Mr. Ledingham states the following:

1. Under Rule 205.3, an attorney in good standing from any other jurisdiction in the United States may, in the discretion of a Colorado court of record, be permitted to participate



before the Court in a trial, argument and other proceeding in a matter in which the attorney is employed, provided that a member in good standing of the Bar of the State of Colorado is associated in such cause at all stages of the case.

2. Mr. Ledingham is a senior counsel in the law firm of Proskauer Rose LLP and practices in the firm's Los Angeles, California office. Mr. Ledingham is a member in good standing of the State Bar of California and is assigned attorney registration or bar admission number 275268 in the State of California.

3. Mr. Ledingham is also admitted in the following additional jurisdictions: U.S. Supreme Court, U.S. Courts of Appeals for the Second, Ninth, and Tenth Circuits, and U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California.

4. Mr. Ledingham has not previously sought *pro hac vice* admission in Colorado.

5. Mr. Ledingham is in good standing in all bars to which he is admitted, and he has not been subject to any order of discipline or disability by any bar, or had any request for *pro hac vice* admission denied or revoked.

6. Mr. Ledingham is co-counsel for Brownstein Hyatt Farber Schreck, LLP ("BHFS") in the above-referenced action, and he has notified BHFS of the filing of this Verified Motion.

7. Mr. Ledingham acknowledges that he is subject to all applicable provisions of the Colorado Rules of Professional Conduct, the Colorado Rules of Civil Procedure and other court rules, that he will follow those rules throughout the *pro hac vice* admission, and that this Verified Motion complies with those rules.

8. Richard B. Benenson, #32566, is a member in good standing of the Bar of the State of Colorado.



9. Mr. Benenson will be present and participate in a meaningful and substantial manner throughout the proceedings and trial of this matter.

10. Mr. Ledingham has filed a copy of this motion with the Clerk of the Colorado Supreme Court at the Office of Attorney Registration, 1300 Broadway, Suite 510, Denver, Colorado 80203 and paid the required fee.

11. By execution of the attached verification, Mr. Ledingham attests that the facts stated in this motion are true and correct.

12. By execution of the attached verification, Mr. Benenson verifies Mr. Ledingham's association on this matter.

WHEREFORE, Shawn S. Ledingham Jr. respectfully requests that the Court admit him *pro hac vice* to appear before the Court in this case.

DATED this 30th day of December, 2020.

PROSKAUER ROSE LLP

*Original signature on file at offices of Proskauer Rose LLP  
pursuant to C.R.C.P. 121 § 1-26*

By: s/ Shawn S. Ledingham, Jr.  
Shawn S. Ledingham, Jr., CA 275268

and

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

*Original signature on file at offices of Brownstein Hyatt  
Farber Schreck pursuant to C.R.C.P. 121 § 1-26*

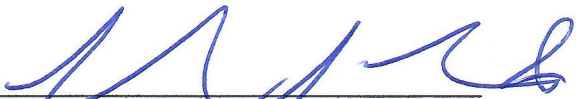
By: s/ Richard B. Benenson  
Richard B. Benenson, #32566




**VERIFICATION OF SHAWN S. LEDINGHAM, JR.**

I Shawn S. Ledingham, Jr., hereby swear or affirm that the statements made in the VERIFIED MOTION OF SHAWN S. LEDINGHAM, JR. FOR PRO HAC VICE ADMISSION are true and correct to the best of my knowledge.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

  
Shawn S. Ledingham, Jr.

Subscribed and sworn to before me by Shawn S. Ledingham Jr., this 30th day of December 2020.

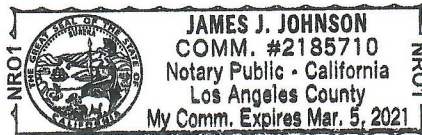
  
Notary Public

State of California

County of: Los Angeles

My Commission Expires: 03-05-2021

[SEAL]



**VERIFICATION OF RICHARD B. BENENSON**

I Richard B. Benenson, hereby verify the association of Shawn S. Ledingham Jr. with Brownstein Hyatt Farber Schreck, LLP in the litigation styled as *Chan v. Dragul, et al.*, Denver District Court Case No. 2018CV33011.



Richard B. Benenson

Subscribed and sworn to before me by Richard B. Benenson, this 31st day of December 2020.



Notary Public

State of Nevada

County of: Clark

My Commission Expires: May 25, 2022

**YAJAIRA LOZANO**  
NOTARY PUBLIC  
STATE OF NEVADA  
**Commission # 18-2648-1**  
My Appt. Expires May 25, 2022

Notary Stamp 2020/12/31 08:14:49 PST - Notarial act performed by means of audio video communication DB1809B2C0AF





**CERTIFICATE OF SERVICE**

I hereby certify pursuant to C.R.C.P. 205.3(2)(b)(vii) that on this 31st day of December 2020:

- I electronically filed the foregoing **VERIFIED MOTION OF SHAWN S. LEDINGHAM, JR. FOR PRO HAC VICE ADMISSION** via the Colorado Courts E-Filing System, which will send notification and service upon all counsel of record; and
- I provided Brownstein Hyatt Farber Schreck, LLP with a copy of the foregoing **VERIFIED MOTION OF SHAWN S. LEDINGHAM, JR. FOR PRO HAC VICE ADMISSION** via electronic mail.

*/s/ Penny G. Lalonde* \_\_\_\_\_  
Penny G. Lalonde, Paralegal



DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>Attorneys for Brownstein Hyatt Farber Schreck, LLP:</p> <p>Richard B. Benenson, #32566          BROWNSTEIN HYATT FARBER SCHRECK, LLP          410 Seventeenth Street, Suite 2200          Denver, CO 80202-4432          Phone: 303.223.1100          Fax: 303.223.1111          Emails: rbenenson@bhfs.com</p> <p>Bart H. Williams, CA 134009, <i>pro hac vice pending</i>          Jennifer L. Roche, CA 254538, <i>pro hac vice pending</i>          Shawn S. Ledingham Jr., CA 275268, <i>pro hac vice pending</i>          PROSKAUER ROSE LLP          2029 Century Park East, 24th Floor          Los Angeles, CA 90067          Phone: 310. 557.2900          Emails: bwilliams@proskauer.com;          jroche@proskauer.com; sledingham@proskauer.com</p>	<p>Case Number: 2018CV33011</p> <p>Div/Ctrm: 424</p>
<p><b>VERIFIED MOTION OF JENNIFER L. ROCHE FOR PRO HAC VICE ADMISSION</b></p>	

Pursuant to C.R.C.P. 121 § 1-2 and C.R.C.P. 205.3, Jennifer L. Roche of Proskauer Rose LLP hereby moves for *pro hac vice* admission to appear before this Court in the above-captioned matter. As grounds for this motion, Ms. Roche states the following:



1. Under Rule 205.3, an attorney in good standing from any other jurisdiction in the United States may, in the discretion of a Colorado court of record, be permitted to participate before the Court in a trial, argument and other proceeding in a matter in which the attorney is employed, provided that a member in good standing of the Bar of the State of Colorado is associated in such cause at all stages of the case.

2. Ms. Roche is a senior counsel in the law firm of Proskauer Rose LLP and practices in the firm's Los Angeles, California office. Ms. Roche is a member in good standing of the State Bar of California and is assigned attorney registration or bar admission number 254538 in the State of California.

3. Ms. Roche is also admitted in the following additional jurisdictions: U.S. Courts of Appeals for the First and Ninth Circuits, and U.S. District Courts for the Northern, Central, and Eastern Districts of California.

4. Ms. Roche has not previously sought *pro hac vice* admission in Colorado.

5. Ms. Roche is in good standing in all bars to which she is admitted, and she has not been subject to any order of discipline or disability by any bar, or had any request for *pro hac vice* admission denied or revoked.

6. Ms. Roche is co-counsel for Brownstein Hyatt Farber Schreck, LLP ("BHFS") in the above-referenced action, and she has notified BHFS of the filing of this Verified Motion.

7. Ms. Roche acknowledges that she is subject to all applicable provisions of the Colorado Rules of Professional Conduct, the Colorado Rules of Civil Procedure and other court rules, that she will follow those rules throughout the *pro hac vice* admission, and that this Verified Motion complies with those rules.



8. Richard B. Benenson, #32566, is a member in good standing of the Bar of the State of Colorado.

9. Mr. Benenson will be present and participate in a meaningful and substantial manner throughout the proceedings and trial of this matter.

10. Ms. Roche has filed a copy of this motion with the Clerk of the Colorado Supreme Court at the Office of Attorney Registration, 1300 Broadway, Suite 510, Denver, Colorado 80203 and paid the required fee.

11. By execution of the attached verification, Ms. Roche attests that the facts stated in this motion are true and correct.

12. By execution of the attached verification, Mr. Benenson verifies Ms. Roche's association on this matter.

WHEREFORE, Jennifer L. Roche respectfully requests that the Court admit her *pro hac vice* to appear before the Court in this case.

DATED this 30th day of December, 2020.

PROSKAUER ROSE LLP

*Original signature on file at offices of Proskauer Rose LLP  
pursuant to C.R.C.P. 121 § 1-26*

By: s/ Jennifer L. Roche  
Jennifer L. Roche, CA 254538

and

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

*Original signature on file at offices of Brownstein Hyatt  
Farber Schreck pursuant to C.R.C.P. 121 § 1-26*

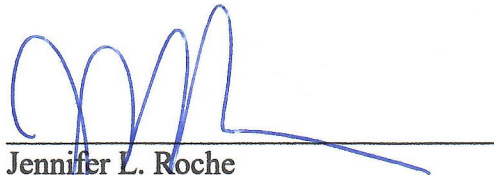
By: s/ Richard B. Benenson  
Richard B. Benenson, #32566



**VERIFICATION OF JENNIFER L. ROCHE**

I Jennifer L. Roche, hereby swear or affirm that the statements made in the VERIFIED MOTION OF JENNIFER L. ROCHE FOR PRO HAC VICE ADMISSION are true and correct to the best of my knowledge.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

  
Jennifer L. Roche

Subscribed and sworn to before me by Jennifer L. Roche, this 30th day of December 2020.

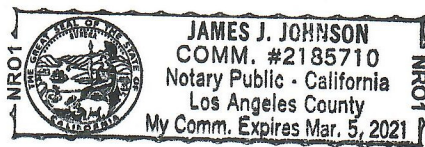
  
Notary Public

State of California

County of: Los Angeles

My Commission Expires: 03-05-2021

[SEAL]



**VERIFICATION OF RICHARD B. BENENSON**

I Richard B. Benenson, hereby verify the association of Jennifer L. Roche with Brownstein Hyatt Farber Schreck, LLP in the litigation styled as *Chan v. Dragul, et al.*, Denver District Court Case No. 2018CV33011.

  
Signed on 2020/12/31 07:14:49 -8:00

Richard B. Benenson

Subscribed and sworn to before me by Richard B. Benenson, this 31st day of December 2020.

  
Signed on 2020/12/31 07:14:49 -8:00

Notary Public

State of Nevada

County of: Clark

My Commission Expires: May 25, 2022



**CERTIFICATE OF SERVICE**

I hereby certify pursuant to C.R.C.P. 205.3(2)(b)(vii) that on this 31st day of December 2020:

- I electronically filed the foregoing **VERIFIED MOTION OF JENNIFER L. ROCHE FOR PRO HAC VICE ADMISSION** via the Colorado Courts E-Filing System, which will send notification and service upon all counsel of record; and
- I provided Brownstein Hyatt Farber Schreck, LLP with a copy of the foregoing **VERIFIED MOTION OF JENNIFER L. ROCHE FOR PRO HAC VICE ADMISSION** via electronic mail.

*/s/ Penny G. Lalonde* \_\_\_\_\_  
Penny G. Lalonde, Paralegal

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