

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, an  
individual; BENJAMIN KAHN, an  
individual; THE CONUNDRUM GROUP,  
LLP, a Colorado limited liability company;  
SUSAN MARKUSCH, an individual;  
MARLIN S. HERSHEY, an individual;  
PERFORMANCE HOLDINGS, INC., a  
Florida corporation; OLSON REAL  
ESTATE SERVICES, LLC, a Colorado  
limited liability company; JOHN AND  
JANE DOES 1-10; and XYZ  
CORPORATIONS 1-10

Counsel for Defendants Performance Holdings, Inc.  
and Marlin Hershey:

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Courtroom: 414

**UNOPPOSED MOTION OF DEFENDANTS MARLIN S. HERSHEY AND  
PERFORMANCE HOLDINGS, INC. FOR EXTENSION OF TIME TO RESPOND TO  
RECEIVER'S FIRST AMENDED COMPLAINT**

Defendants Marlin S. Hershey and Performance Holdings, Inc. (collectively,

“Defendants”) file their Unopposed Motion for Extension of Time to Respond to Receiver’s First Amended Complaint and, in support thereof, respectfully set forth as follows:

1. **C.R.C.P. 121, § 1-15(8) CERTIFICATION:** Prior to filing this Motion, Thomas E. Goodreid, counsel for Marlin Hershey and Performance Holdings, Inc., conferred with Michael Gilbert, counsel for the Receiver, and Mr. Gilbert stated that the Receiver does not oppose the relief requested herein.

2. On June 1, 2020, the Receiver filed his First Amended Complaint. The First Amended Complaint is 127 pages and contains 448 numbered paragraphs and 45 exhibits. In the First Amended Complaint, the Receiver alleges twelve (12) claims against multiple Defendants and up to twenty (20) unnamed parties.

3. In July 2020, Defendants moved to dismiss the First Amended Complaint. The Court denied the motion, and Defendant sought certification to file an interlocutory appeal of such denial. The Court of Appeals denied certification on May 25, 2021. Accordingly, Defendants’ deadline to respond to the First Amended Complaint is June 8, 2021. Given the length and factual and legal complexity of the First Amended Complaint, Defendants’ fourteen (14) day response time does not provide Defendants with sufficient time to formulate, research, and draft their respective responses thereto. Accordingly, Defendants respectfully request an extension of time of ten (10) days – or up to and until June 18, 2021 – to respond to the First Amended Complaint.

4. C.R.C.P. 6(b) governs requests to enlarge deadlines and provides the Court with broad discretion to extend deadlines if the request for the extension is made prior to the expiration of the prescribed period. C.R.C.P. 6(a) (2021). For the reasons set forth herein, an extension of Defendants’ deadline to respond to the First Amended Complaint is warranted. Additionally, Defendants do not make this request for any dilatory purpose and allowing Defendants an additional ten days to respond to the First Amended Complaint will not prejudice

the Receiver or the Court.

5. In accordance with C.R.C.P. 121 § 1-11, the undersigned counsel certify that they have served a copy of this Motion upon their respective clients.

Respectfully submitted this 8th day of June 2021.

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

*Attorneys for Performance Holdings,  
Inc. and Marlin Hershey*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via Colorado Courts E-Filing on this 8th day of June 2021:

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/s/Paul M. Grant  
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