

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	
<p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC v. Defendants: GARY J. 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; and 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.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: Patrick D. Vellone, #15284 Matthew M. Wolf, #33198 Rachel A. Sternlieb, #51404 Michael T. Gilbert, #15009 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout Street, Suite 1900 Denver, Colorado 80202 Phone (303) 534-4499 pvellone@allen-vellone.com mwolf@allen-vellone.com rsternlieb@allen-vellone.com mgilbert@allen-vellone.com</p>	<p>Case No.: 2020CV30255 Division/Courtroom: 414</p>
<p style="text-align: center;">RECEIVER’S RESPONSE TO DRAGUL’S MOTION TO TOLL DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT</p>	

Plaintiff, Harvey Sender (the “**Receiver**”), solely in his capacity as Receiver for Gary Dragul (“**Dragul**”), GDA Real Estate Services, LLC and GDA Real Estate Management, LLC, hereby responds to Defendant Gary Dragul’s Motion to Toll Deadline to Respond to First Amended Complaint (“**Motion to Toll**,” filed May 27, 2021).

1. The Receiver objects to Dragul’s repeated and continuing attempts to delay this case, and to tolling his answer date until the Court rules on his Renewed Motion for Reconsideration. As set forth in the Receiver’s contemporaneously filed Response to the Renewed Motion for Reconsideration, this case has languished in motions practice far too long. No other defendant has moved to further delay this case. While Dragul alone may benefit from additional delay, no other party will. Indeed, the Receiver’s constituency – the investors Dragul defrauded – have repeatedly asked when the Receivership will wrap up; this cannot happen until this case is resolved. So, contrary to Dragul’s contention that no party will be prejudiced by the requested delay, his defrauded investors will.

2. Although Dragul has not filed one, he argues that if the Motion to Toll is denied and the deadline to answer the FAC approaches, he will move to stay this entire case. Mot. ¶ 4. This because of purported Fifth Amendment concerns given his criminal indictments. Dragul suggests that a stay would not be prejudicial because his first indictment is scheduled for trial at the end of June. *Id.* But on May 28, 2021 – the day after he filed the present Motion to Toll – Dragul once again moved to

continue that trial. *See Exhibit 1.* The motion was granted June 3, 2021, and no trial date has been reset. **Exhibit 2.** There is also a second criminal case pending against Dragul based on grand jury indictments handed down on March 1, 2019. There is no trial date in that case.

3. Although Dragul's criminal cases have been pending since April 12, 2018, seemingly it is only now – after his efforts to dismiss and otherwise delay this case appear to have run their course – that it occurs to Dragul and his counsel that his Fifth Amendment rights may be implicated if he testifies in this case. Yet Dragul's counsel in this case, Paul Vorndran, also represents Dragul in his criminal cases and has been aware of this issue since this case was filed almost a year and-a-half ago.

4. Although no motion to stay is presently before the Court, the Receiver would object to any such motion. Dragul obtained at least 10 continuances of his arraignment date in his criminal cases. He has obtained three continuances of his criminal trials previously scheduled for November 30, 2020, March 22, 2021, and June 28, 2021, and there is no pending criminal trial date.

5. Enough is enough. Dragul's Motion to Toll should be denied so that this case can proceed to trial.

Dated: June 15, 2021.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: s/ Michael T. Gilbert

Patrick D. Vellone, #15284
Matthew M. Wolf, # #33198
Rachel A. Sternlieb, #51404
Michael T. Gilbert, #15009
1600 Stout Street, Suite 1900
Denver, Colorado 80202
Tel: (303) 534-4499
pvellone@allen-vellone.com
mwolf@allen-vellone.com
rsternlieb@allen-vellone.com
mgilbert@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 15, 2021, a true and correct copy of **RECEIVER'S RESPONSE TO DRAGUL'S MOTION TO TOLL DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT** was filed and served via the Colorado Courts E-Filing system to the following:

Paul L. Vorndran
Christopher S. Mills
Jones Keller, P.C.
1999 Broadway Street
Suite 3150
Denver, CO 80202
pvorndran@joneskeller.com
pmills@joneskeller.com

Counsel for Defendant, Gary Dragul

Thomas E. Goodreid
Goodreid and Grant, LLC
1801 Broadway, Suite 1400
Denver, CO 80202
(303) 296-2048
t.goodreid@comcast.net

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

John M. Palmeri
Margaret L. Boehmer
Gordon Rees Scully Mansukhani LLP
555 17th Street, Suite 3400
Denver, CO 80202
jpalmeri@grsm.com
mboehmer@grsm.com

***Counsel for Defendants Benjamin
Kahn and the Conundrum Group,
P.C.***

T. Edward Williams
Williams LLP
7 World Trade Center
250 Greenwich St., 46th Floor
NY, NY 10007

***Counsel for Susan Markusch and
Olson Real Estate Services, LLC***


s/ Terri M. Novoa
Allen Vellone Wolf Helfrich & Factor P.C.

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Englewood, CO 80112	DATE FILED: May 28, 2021 1:29 PM FILING ID: CC89375CCCC403 CASE NUMBER: 2018CR1092
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. GARY DRAGUL, Defendant.	Δ COURT USE ONLY Δ
<i>Attorneys for the Defendant</i> Paul L. Vorndran, #22098 Jones & Keller, P.C. 1999 Broadway, Suite 3150 Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com Joshua D. Amos, #41275 McDermott Stuart & Ward LLP 140 E. 19th Avenue, Suite 300 Denver, CO 80203 Phone: 303-832-8888 Fax: 303-863-8888 Email: jamos@mswdenver.com	Case No. 18CR1092 Division: 407
UNOPPOSED MOTION TO CONTINUE TRIAL	

Mr. Dragul, through undersigned counsel, respectfully moves to continue the currently scheduled trial dates (June 28, 2021 – July 13, 2021). This motion is unopposed by the Prosecution. As grounds, he states:

1. Numerous reasons recognized by both parties are preventing the defense from announcing ready for trial. As a courtesy to the Prosecution, the defense is now moving to continue the trial rather than waiting until the trial status conference scheduled for June 22, 2021, because the Prosecution intends call many out of state witnesses and the

Prosecution wishes to avoid wasting money on plane tickets for a trial that will be continued.

2. Specifically, the defense needs additional time to prepare for trial due to ongoing forensic accounting being conducted by an expert witness. The witness needs the contents of documents which have been subpoenaed by the defense, but not yet reviewed by the expert¹. It is counsel's understanding that the documents consist of hundreds of thousands of pages. A review of the documents is imperative to the defense's ability to prepare and present a defense.

3. Moreover, the Prosecution is seeking discretionary disclosures of the expert witness mentioned in paragraph 2. These disclosures cannot be made until the expert finishes her report which cannot be concluded until she reviews the contents of the SDT.

4. In addition, the parties are waiting for rulings from the Court which will have a substantial impact on trial preparation, including rulings on two separate motions to quash SDTs, a motion requesting a Bill of Particulars, and a defense motion to dismiss for a violation of the Statute of Limitations. Also, the defense is in the process of drafting a motion in limine asking for several pretrial rulings limiting the scope of the Government's case.

Wherefore, the Defense asks the Court to issue a ruling vacating the trial dates. The Parties wish to keep the currently scheduled pretrial readiness date of June 22, 2021, for Mr. Dragul to waive his speedy trial rights on the record and reschedule trial dates and schedule a short motion hearing to address the outstanding legal issues. A failure to grant this motion will violate Mr. Dragul's state and federal right to Due Process.

¹ The SDT referenced has a lengthy history: (1) It was issued returnable to the court, (2) subject to a motion to quash by the Prosecution, which was eventually withdrawn, and (3) then the SDT was returned to defense counsel, which was not as instructed by the SDT, and not yet opened by defense counsel. Defense counsel is waiting for additional instruction from the Court on how to handle the contents of documents returned by the SDT.

Respectfully submitted,

Attorneys for Mr. Dragul

s/ Paul L. Vorndran

Paul L. Vorndran, #22098
Jones & Keller, P.C.

s/ Joshua D. Amos

Joshua D. Amos, #41275
McDermott Stuart & Ward LLP

Date: May 28, 2021

Certificate of Service

I hereby certify that on May 21, 2021, served the foregoing document by e-delivering same to all opposing counsel of record.

s/ Joshua D. Amos

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Englewood, CO 80112	GRANTED BY COURT 06/03/2021 DATE FILED: June 3, 2021 10:02 AM CASE NUMBER: 2018CR1092
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. GARY DRAGUL, Defendant.	 JOSEPH RILEY WHITFIELD District Court Judge Δ COURT USE ONLY Δ
<i>Attorneys for the Defendant</i> Paul L. Vorndran, #22098 Jones & Keller, P.C. 1999 Broadway, Suite 3150 Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com Joshua D. Amos, #41275 McDermott Stuart & Ward LLP 140 E. 19th Avenue, Suite 300 Denver, CO 80203 Phone: 303-832-8888 Fax: 303-863-8888 Email: jamos@mswdenver.com	Case No. 18CR1092 Division: 407
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Respectfully submitted,

Attorneys for Mr. Dragul

s/ Paul L. Vorndran

Paul L. Vorndran, #22098
Jones & Keller, P.C.

s/ Joshua D. Amos

Joshua D. Amos, #41275
McDermott Stuart & Ward LLP

Date: May 28, 2021

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s/ Joshua D. Amos