

DISTRICT COURT, DENVER COUNTY,  
STATE OF COLORADO

Court Address:  
1437 Bannock Street  
Denver, CO 80202

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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; and  
PERFORMANCE HOLDINGS, INC., a  
Florida corporation; JOHN AND JANE  
DOES 1-10; and XYZ CORPORATIONS  
1-10

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Atty. Reg. # 26517(Grant)

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Case Number: 20CV30255

Courtroom: 414

**ANSWER OF THE HERSHEY DEFENDANTS, WITH JURY DEMAND**

Defendants Performance Holdings, Inc., and Marlin S. Hershey (collectively the “Hershey Defendants”), through counsel, answer the First Amended Complaint as follows.

## I. RESPONSES TO ALLEGATIONS

1. As regards the allegations contained in paragraph 1 of the First Amended Complaint, the Hershey Defendants deny that Marlin Hershey was involved in any fraud scheme and that the Hershey Defendants inappropriately solicited money from any investors; otherwise, the Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 1 of the First Amended Complaint.

2. With respect to the allegations contained in paragraph 2 of the First Amended Complaint, the Hershey Defendants deny that they lured investors into investing millions under false and misleading pretenses; the Hershey Defendants otherwise lack information sufficient either to admit or to deny the allegations contained in this paragraph.

3. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 3 of the First Amended Complaint.

4. The Hershey Defendants deny the allegations in paragraph 4 of the First Amended Complaint insofar as they pertain to the Hershey Defendants; otherwise, the Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 4 of the First Amended Complaint.

5. With respect to the allegations contained in paragraph 5 of the First Amended Complaint, the Hershey Defendants admit that, *inter alia*, Mr. Hershey is involved in a lawsuit with the SEC but note that part of that lawsuit has been settled. The Hershey Defendants otherwise deny the allegations contained in paragraph 5.

6. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 6 of the First Amended Complaint, except as to the phrase “Like Hershey”, which verbiage the Hershey Defendants deny.

7. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 7 of the First Amended Complaint

8. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 8 of the First Amended Complaint.

9. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 9 of the First Amended Complaint.

10. The Hershey Defendants admit the allegations contained in paragraph 10 of the First Amended Complaint.

11. The allegations contained in paragraph 11 of the First Amended Complaint refer to the contents of a document, which document speaks for itself.

12. The allegations contained in paragraph 12 of the First Amended Complaint refer to the contents of a document, which document speaks for itself.

13. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 13 of the First Amended Complaint.

14. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 14 of the First Amended Complaint.

15. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 15 of the First Amended Complaint.

16. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 16 of the First Amended Complaint.

17. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 17 of the First Amended Complaint.

18. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 18 of the First Amended Complaint.

19. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 19 of the First Amended Complaint.

20. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 20 of the First Amended Complaint.

21. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 21 of the First Amended Complaint.

22. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 22 of the First Amended Complaint.

23. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 23 of the First Amended Complaint.

24. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 24 of the First Amended Complaint.

25. The Hershey Defendants admit the allegations contained in paragraph 25 of the First Amended Complaint.

26. The Hershey Defendants admit the allegations contained in paragraph 26 of the First Amended Complaint.

27. With respect to the allegations contained in paragraph 27 of the First Amended Complaint, the Hershey Defendants admit that Mr. Hershey was one of the owners of PHI, which received some referral fees germane to this case.

28. The Hershey Defendants admit the allegations contained in paragraph 28 of the First Amended Complaint.

29. The Hershey Defendants admit the allegations contained in paragraph 29 of the First Amended Complaint.

30. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 30 of the First Amended Complaint.

31. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 31 of the First Amended Complaint.

32. The allegations contained in paragraph 32 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

33. The allegations contained in paragraph 33 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

34. The Hershey Defendants deny the allegations in paragraph 34 of the First Amended Complaint.

35. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 35 of the First Amended Complaint.

36. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 36 of the First Amended Complaint.

37. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 37 of the First Amended Complaint.

38. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 38 of the First Amended Complaint.

39. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 39 of the First Amended Complaint

40. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 40 of the First Amended Complaint.

41. The Hershey Defendants deny the allegations contained in paragraphs 41 of the First Amended Complaint.

42. The Hershey Defendants deny the allegations contained in paragraphs 42 of the First Amended Complaint.

43. The Hershey Defendants deny the allegations contained in paragraphs 43 of the First Amended Complaint.

44. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 44 of the First Amended Complaint.

45. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 45 of the First Amended Complaint.

46. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 46 of the First Amended Complaint.

47. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 47 of the First Amended Complaint.

48. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 48 of the First Amended Complaint.

49. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 49 of the First Amended Complaint.

50. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 50 of the First Amended Complaint.

51. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 51 of the First Amended Complaint.

52. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 52 of the First Amended Complaint.

53. The Hershey Defendants deny the allegations contained in paragraph 53 of the First Amended Complaint insofar as they are directed toward the Hershey Defendants; otherwise, the Hershey Defendants are without information sufficient either to admit or to deny these allegations.

54. The allegations contained in paragraph 54 of the First Amended Complaint refer to the contents of a document, which document speaks for itself.

55. The allegations contained in paragraph 55 of the First Amended Complaint refer to the contents of a document, which document speaks for itself.

56. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 56 of the First Amended Complaint.

57. The Hershey Defendants deny the allegations contained in paragraph 57 of the First Amended Complaint insofar as they are directed toward the Hershey Defendants; otherwise, the Hershey Defendants are without information sufficient either to admit or to deny these allegations.

58. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 58 of the First Amended Complaint.

59. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 59 of the First Amended Complaint.

60. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 60 of the First Amended Complaint.

61. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 61 of the First Amended Complaint.

62. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 62 of the First Amended Complaint.

63. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 63 of the First Amended Complaint.

64. The Hershey Defendants lack information sufficient either to admit or to deny the

allegations contained in the first, third, and fourth sentences of the paragraph 64 of the First Amended Complaint. With respect to the allegations contained in the second sentence of paragraph 64 of the First Amended Complaint, the Hershey Defendants admit that Mr. Hershey stated to various individuals that Dragul was wealthy and successful; the Hershey Defendants deny that Mr. Hershey “solicited” promissory notes; and the Hershey Defendants are without information sufficient either to admit or to deny the remaining allegations in this second sentence.

65. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 65 of the First Amended Complaint.

66. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 66 of the First Amended Complaint.

67. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in the first sentence of paragraph 67 of the First Amended Complaint. The Hershey Defendants admit the allegations contained in the second sentence of paragraph 67 of the First Amended Complaint. The allegations contained in the third sentence of paragraph 67 of the First Amended Complaint consist of characterizations of the contents of written materials, which materials speak for themselves. The Hershey Defendants deny the allegations contained in the fourth sentence of paragraph 67 of the First Amended Complaint.

68. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 68 of the First Amended Complaint.

69. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 69 of the First Amended Complaint.

70. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 70 of the First Amended Complaint.

71. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 71 of the First Amended Complaint.

72. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 72 of the First Amended Complaint.

73. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 73 of the First Amended Complaint.

74. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 74 of the First Amended Complaint.

75. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 75 of the First Amended Complaint.

76. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 76 of the First Amended Complaint.

77. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 77 of the First Amended Complaint.

78. The Hershey Defendants deny the allegations contained in the first sentence of paragraph 78 of the First Amended Complaint. The Hershey Defendants admit the allegations contained in the second sentence of paragraph 78 of the First Amended Complaint.

79. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 79 of the First Amended Complaint.

80. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 80 of the First Amended Complaint.

81. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 81 of the First Amended Complaint.

82. The allegations contained in the first sentence of paragraph 82 of the First Amended Complaint consist of a purported rendition of the contents of a complaint in a lawsuit filed by the SEC against Mr. Hershey and others; that complaint, a document, speaks for itself. The allegations contained in the second sentence of paragraph 82 of the First Amended Complaint constitute a comparison of two documents (*i.e.*, the First Amended Complaint in this case and the complaint in the referenced SEC action), which documents speak for themselves.

83. With respect to the allegations contained in paragraph 83 of the First Amended Complaint, the Hershey Defendants deny that they “solicited” investor funds or any implication that they were aware that Dragul was operating a “Sham Business”; the Hershey Defendants admit the remaining allegations contained in this paragraph

84. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 84 of the First Amended Complaint.

85. The allegations contained in paragraph 85 of the First Amended Complaint consist of characterizations of the contents of documents, which documents speak for themselves.

86. The allegations contained in paragraph 86 of the First Amended Complaint consist of characterizations of the contents of documents, which documents speak for themselves.

87. The Hershey Defendants deny the allegations contained in paragraph 87 of the First Amended Complaint, insofar as those allegations pertain to the Hershey Defendants.



88. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 88 of the First Amended Complaint.

89. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 89 of the First Amended Complaint.

90. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 90 of the First Amended Complaint.

91. The allegations contained in paragraph 91 of the First Amended Complaint consist primarily of characterizations of the contents of documents, which documents speak for themselves, except for the phrase “which the Fox Defendants knew would be and in fact were distributed to prospective investors by both Dragul and Hershey in 2010”, which phrase the Hershey Defendants lack information sufficient either to admit or to deny.

92. As regards the allegations contained in paragraph 92 of the First Amended Complaint, the Hershey Defendants lack information sufficient either to admit or to deny the phrase “Once received from Fox”; the Hershey Defendants admit the remaining allegations contained in this paragraph.

93. The Hershey Defendants admit the allegations contained in paragraph 93 of the First Amended Complaint, except that the Hershey Defendants lack information sufficient either to admit or to deny the phrase “who relied on them for their investment decision.”

94. The Hershey Defendants deny the allegations contained in paragraph 94 of the First Amended Complaint.

95. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 95 of the First Amended Complaint.

96. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 96 of the First Amended Complaint.

97. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 97 of the First Amended Complaint.

98. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 98 of the First Amended Complaint.

99. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 99 of the First Amended Complaint.

100. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 100 of the First Amended Complaint.

101. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 101 of the First Amended Complaint, except for the phrase “who distributed the Solicitation Materials”, which phrase the Hershey Defendants admit.

102. To the extent that the allegations contained in paragraph 102 of the First Amended Complaint characterize a document or documents, that document or those documents speaks/speak for itself/themselves; as to the remaining allegations contained in this paragraph of the First Amended Complaint, the Hershey Defendants are without information sufficient either to admit or to deny those allegations.

103. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 103 of the First Amended Complaint.

104. The Hershey Defendants deny the allegations contained in paragraph 104 of the First Amended Complaint.

105. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 105 of the First Amended Complaint.

106. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 106 of the First Amended Complaint.

107. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 107 of the First Amended Complaint.

108. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in the first sentence of paragraph 108 of the First Amended Complaint. With respect to the allegations contained in the second sentence of the First Amended Complaint, the Hershey Defendants deny that Mr. Hershey “solicited and raised investor funds”; with respect to the remaining allegations contained in this sentence, the Hershey Defendants admit that Dragul invited Mr. Hershey to edit and comment on certain aspects of property updates before sending them to investors.

109. The allegations contained in paragraph 109 of the First Amended Complaint refer to the contents of documents, which documents speak for themselves.

110. The Hershey Defendants deny the allegations contained in the first independent clause of the first sentence of paragraph 110 of the First Amended Complaint; the Hershey Defendants are without information sufficient either to admit or to deny the allegations contained in the second independent clause of the first sentence of paragraph 110 of the First Amended Complaint.

111. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 111 of the First Amended Complaint.

112. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 112 of the First Amended Complaint.

113. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 113 of the First Amended Complaint.

114. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 114 of the First Amended Complaint.

115. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in the first sentence of paragraph 115 of the First Amended Complaint. The Hershey Defendants deny the allegations contained in the second sentence of paragraph 115 of the First Amended Complaint.

116. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 116 of the First Amended Complaint.

117. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 117 of the First Amended Complaint.

118. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 118 of the First Amended Complaint.

119. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 119 of the First Amended Complaint.

120. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 120 of the First Amended Complaint.

121. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 121 of the First Amended Complaint.

122. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 122 of the First Amended Complaint.

123. The allegations contained in paragraph 123 of the First Amended Complaint refer to the contents of documents, which documents speak for themselves.

124. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 124 of the First Amended Complaint.

125. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 125 of the First Amended Complaint.

126. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 126 of the First Amended Complaint.

127. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 127 of the First Amended Complaint.

128. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 128 of the First Amended Complaint.

129. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 129 of the First Amended Complaint.

130. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 130 of the First Amended Complaint.

131. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 131 of the First Amended Complaint.

132. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 132 of the First Amended Complaint.

133. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 133 of the First Amended Complaint.

134. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 134 of the First Amended Complaint.

135. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 135 of the First Amended Complaint.

136. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 136 of the First Amended Complaint.

137. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 137 of the First Amended Complaint.

138. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 138 of the First Amended Complaint.

139. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 139 of the First Amended Complaint.

140. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 140 of the First Amended Complaint.

141. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 141 of the First Amended Complaint.

142. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 142 of the First Amended Complaint.

143. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 143 of the First Amended Complaint.

144. The allegations contained in paragraph 144 of the First Amended Complaint characterizes the contents of a document, which document speaks for itself.

145. The Hershey Defendants admit the allegations contained in paragraph 145 of the First Amended Complaint except for the phrase “for which Hershey would receive a 10% commission from Dragul”, which phrase the Hershey Defendants deny.

146. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 146 of the First Amended Complaint.

147. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 147 of the First Amended Complaint.

148. The allegations contained in paragraph 148 of the First Amended Complaint principally characterize the contents of documents, which documents speak for themselves.

149. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 149 of the First Amended Complaint.

150. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 150 of the First Amended Complaint.

151. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 151 of the First Amended Complaint.

152. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 152 of the First Amended Complaint.

153. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 153 of the First Amended Complaint.

154. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 154 of the First Amended Complaint.

155. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 155 of the First Amended Complaint.

156. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 156 of the First Amended Complaint.

157. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 157 of the First Amended Complaint.

158. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 158 of the First Amended Complaint.

159. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 159 of the First Amended Complaint.

160. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 160 of the First Amended Complaint.

161. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 161 of the First Amended Complaint.

162. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 162 of the First Amended Complaint.

163. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 163 of the First Amended Complaint.

164. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 164 of the First Amended Complaint.

165. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 165 of the First Amended Complaint.

166. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 166 of the First Amended Complaint.

167. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 167 of the First Amended Complaint.

168. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 168 of the First Amended Complaint.

169. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 169 of the First Amended Complaint.

170. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 170 of the First Amended Complaint.

171. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 171 of the First Amended Complaint.

172. The Hershey Defendants lack information sufficient either to admit or to deny

the allegations contained in paragraph 172 of the First Amended Complaint.

173. With respect to the allegations contained in the first sentence of paragraph 173 of the First Amended Complaint, the Hershey defendants deny the wording “to solicit”; the Hershey Defendants otherwise admit the allegations in this sentence. The Hershey Defendants admit the allegations contained in the second sentence of paragraph 173 of the First Amended Complaint, except for the phrase, “for which Hershey would receive a 6% commission on each investment made”, which phrase the Hershey Defendants deny.

174. The Hershey Defendants admit the allegations contained paragraph 174 of the First Amended Complaint, except for the phrase “assuming that these rent rolls would be of more value to prospective investors than formal Solicitation Materials”, which phrase these Defendants are without information sufficient either to admit or to deny.

175. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 175 of the First Amended Complaint.

176. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 176 of the First Amended Complaint.

177. The Hershey Defendants admit the allegations contained in the first sentence of paragraph 177 of the First Amended Complaint, except for the phrase “had been solicited”, which phrase these Defendants deny. As to the allegations contained in the second sentence of paragraph 177 of the First Amended Complaint, the Hershey Defendants admit the phrase “Hershey forwarded the email to Dragul for instruction”; the Hershey Defendants are without information sufficient either to admit or to deny the remaining allegations in the second sentence of this Paragraph.

178. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 178 of the First Amended Complaint.

179. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 179 of the First Amended Complaint.

180. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 180 of the First Amended Complaint.

181. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 181 of the First Amended Complaint.

182. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 182 of the First Amended Complaint.

183. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 183 of the First Amended Complaint.

184. As regards the allegations contained in paragraph 184 of the First Amended Complaint, the Hershey Defendants admit that Mr. Hershey was contacted by a number of FC investors after the sale of Highlands Ranch; the Hershey Defendants are without information sufficient to admit or to deny the remaining allegations contained in this paragraph.

185. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 185 of the First Amended Complaint.

186. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 186 of the First Amended Complaint.

187. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 187 of the First Amended Complaint.

188. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 188 of the First Amended Complaint.

189. The Hershey Defendants deny the allegations contained in paragraph 189 of the First Amended Complaint.

190. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 190 of the First Amended Complaint.

191. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 191 of the First Amended Complaint.

192. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 192 of the First Amended Complaint.

193. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 193 of the First Amended Complaint.

194. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 194 of the First Amended Complaint.

195. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 195 of the First Amended Complaint.

196. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 196 of the First Amended Complaint.

197. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 197 of the First Amended Complaint.

198. The Hershey Defendants lack information sufficient either to admit or to deny



the allegations contained in paragraph 198 of the First Amended Complaint.

199. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 199 of the First Amended Complaint.

200. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 200 of the First Amended Complaint.

201. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 201 of the First Amended Complaint.

202. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 202 of the First Amended Complaint.

203. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 203 of the First Amended Complaint.

204. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 204 of the First Amended Complaint.

205. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 205 of the First Amended Complaint.

206. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 206 of the First Amended Complaint.

207. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 207 of the First Amended Complaint.

208. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 208 of the First Amended Complaint.

209. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 209 of the First Amended Complaint.

210. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 210 of the First Amended Complaint.

211. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 211 of the First Amended Complaint.

212. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 212 of the First Amended Complaint.

213. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 213 of the First Amended Complaint.

214. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 214 of the First Amended Complaint.

215. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 215 of the First Amended Complaint.

216. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 216 of the First Amended Complaint.

217. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 217 of the First Amended Complaint.

218. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 218 of the First Amended Complaint.

219. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 219 of the First Amended Complaint.

220. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 220 of the First Amended Complaint.

221. The Hershey Defendants deny the allegations contained in paragraph 221 of the First Amended Complaint.

222. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 222 of the First Amended Complaint.

223. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 223 of the First Amended Complaint.

224. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 224 of the First Amended Complaint.

225. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 225 of the First Amended Complaint.

226. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 226 of the First Amended Complaint.

227. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 227 of the First Amended Complaint.

228. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 228 of the First Amended Complaint.

229. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 229 of the First Amended Complaint.

230. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 230 of the First Amended Complaint.

231. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 231 of the First Amended Complaint.

232. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 232 of the First Amended Complaint.

233. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 233 of the First Amended Complaint.

234. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 234 of the First Amended Complaint.

235. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 235 of the First Amended Complaint.

236. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 236 of the First Amended Complaint.

237. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 237 of the First Amended Complaint.

238. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 238 of the First Amended Complaint.

239. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 239 of the First Amended Complaint.

240. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 240 of the First Amended Complaint.

241. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 241 of the First Amended Complaint.

242. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 242 of the First Amended Complaint.

243. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 243 of the First Amended Complaint.

244. The Hershey Defendants lack information sufficient either to admit or to deny

the allegations contained in paragraph 244 of the First Amended Complaint.

245. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 245 of the First Amended Complaint.

246. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 246 of the First Amended Complaint.

247. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 247 of the First Amended Complaint.

248. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 248 of the First Amended Complaint.

249. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 249 of the First Amended Complaint.

250. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 250 of the First Amended Complaint.

251. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 251 of the First Amended Complaint.

252. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 252 of the First Amended Complaint.

253. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 253 of the First Amended Complaint.

254. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 254 of the First Amended Complaint.

255. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 255 of the First Amended Complaint.

256. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 256 of the First Amended Complaint.

257. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 257 of the First Amended Complaint.

258. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 258 of the First Amended Complaint.

259. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 259 of the First Amended Complaint.

260. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 260 of the First Amended Complaint.

261. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 261 of the First Amended Complaint.

262. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 262 of the First Amended Complaint.

263. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 263 of the First Amended Complaint.

264. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 264 of the First Amended Complaint.

265. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 265 of the First Amended Complaint.

266. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 266 of the First Amended Complaint.

267. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 267 of the First Amended Complaint.

268. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 268 of the First Amended Complaint.

269. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 269 of the First Amended Complaint.

270. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 270 of the First Amended Complaint.

271. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 271 of the First Amended Complaint.

272. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 272 of the First Amended Complaint.

273. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 273 of the First Amended Complaint.

274. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 274 of the First Amended Complaint.

275. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 275 of the First Amended Complaint.

276. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 276 of the First Amended Complaint.

277. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 277 of the First Amended Complaint.

278. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 278 of the First Amended Complaint.

279. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 279 of the First Amended Complaint.

280. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 280 of the First Amended Complaint.

281. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 281 of the First Amended Complaint.

282. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 282 of the First Amended Complaint.

283. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 283 of the First Amended Complaint.

284. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 284 of the First Amended Complaint.

285. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 285 of the First Amended Complaint.

286. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 286 of the First Amended Complaint.

287. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 287 of the First Amended Complaint.

288. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 288 of the First Amended Complaint.

289. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 289 of the First Amended Complaint.

290. The Hershey Defendants lack information sufficient either to admit or to deny

the allegations contained in paragraph 290 of the First Amended Complaint.

291. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 291 of the First Amended Complaint.

292. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 292 of the First Amended Complaint.

293. The allegations contained in paragraph 293 of the First Amended Complaint refer to the contents of documents, which documents speak for themselves.

294. The Hershey Defendants deny the allegations contained in paragraph 294 of the First Amended Complaint.

295. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 295 of the First Amended Complaint.

296. The Hershey Defendants deny the allegations contained in paragraph 296 of the First Amended Complaint.

297. The Hershey Defendants deny the allegations contained in paragraph 297 of the First Amended Complaint.

298. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 298 of the First Amended Complaint.

299. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 299 of the First Amended Complaint.

300. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 300 of the First Amended Complaint.

301. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 301 of the First Amended Complaint.

302. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 302 of the First Amended Complaint.

303. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 303 of the First Amended Complaint.

304. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 304 of the First Amended Complaint.

305. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 305 of the First Amended Complaint.

306. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 306 of the First Amended Complaint.

307. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 307 of the First Amended Complaint.

308. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 308 of the First Amended Complaint.

309. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 309 of the First Amended Complaint.

310. The Hershey Defendants deny the allegations contained in paragraph 310 of the First Amended Complaint.

311. The Hershey Defendants deny the allegations contained in paragraph 311 of the First Amended Complaint.

312. The Hershey Defendants deny the allegations contained in paragraph 312 of the First Amended Complaint.

313. The Hershey Defendants admit the allegations contained in paragraph 313 of the First Amended Complaint.

314. Paragraphs 1 through 313 of this Answer are incorporated by reference herein and made a part hereof.

315. The Hershey Defendants deny the allegations contained in paragraph 315 of the First Amended Complaint.

316. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 316 of the First Amended Complaint.

317. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 317 of the First Amended Complaint.

318. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 318 of the First Amended Complaint.

319. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 319 of the First Amended Complaint.

320. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 320 of the First Amended Complaint.



321. The allegations contained in the prefatory section of paragraph 321 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

321a. The Hershey Defendants deny the allegations contained in paragraph 321a of the First Amended Complaint.

321b. The Hershey Defendants deny the allegations contained in paragraph 321b of the First Amended Complaint.

322. The allegations contained in paragraph 322 of the First Amended Complaint consist of legal conclusions, to which no responsive pleading is required.

323. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 323 of the First Amended Complaint.

324. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 324 of the First Amended Complaint.

325. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 325 of the First Amended Complaint.

326. The Hershey Defendants deny the allegations contained in paragraph 326 of the First Amended Complaint.

327. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 327 of the First Amended Complaint.

328. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 328 of the First Amended Complaint.

329. The Hershey Defendants deny the allegations contained in paragraph 329 of the First Amended Complaint.

330. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 330 of the First Amended Complaint.

331. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 331 of the First Amended Complaint.

332. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 332 of the First Amended Complaint.

333. The allegations contained in paragraph 333 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

334. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 334 of the First Amended Complaint.

335. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 335 of the First Amended Complaint.

336. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 336 of the First Amended Complaint.

337. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 337 of the First Amended Complaint.

338. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 338 of the First Amended Complaint.

339. The Hershey Defendants deny the allegations contained in paragraph 339 of the First Amended Complaint.

340. The allegations contained in paragraph 340 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

341. The Hershey Defendants deny the allegations contained in paragraph 341 of the First Amended Complaint.

342. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 342 of the First Amended Complaint.

343. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 343 of the First Amended Complaint.

344. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 344 of the First Amended Complaint.

345. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 345 of the First Amended Complaint.

346. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 346 of the First Amended Complaint.

347. Defendants deny the allegations contained in paragraph 347 of the First Amended Complaint.

348. The Hershey Defendants deny the allegations contained in paragraph 348 of the First Amended Complaint.

349. The Hershey Defendants lack information sufficient either to admit or to deny

the allegations contained in paragraph 349 of the First Amended Complaint.

350. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 350 of the First Amended Complaint.

351. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 351 of the First Amended Complaint.

352. The Hershey Defendants deny the allegations contained in paragraph 352 of the First Amended Complaint.

353. The Hershey Defendants lack information sufficient either to admit or to deny the allegations contained in paragraph 353 of the First Amended Complaint.

354. The Hershey Defendants deny the allegations contained in paragraph 354 of the First Amended Complaint.

355. Paragraphs 1 through 354 of this Answer are incorporated by reference herein and made a part hereof.

356. The allegations contained in paragraph 356 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

357. The allegations contained in paragraph 357 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

358. Defendants deny the allegations contained in paragraph 358 of the First Amended Complaint.

359. Defendants deny the allegations contained in paragraph 359 of the First Amended Complaint.

360. Paragraphs 1 through 359 of this Answer are incorporated by reference herein and made a part hereof.

361. The allegations contained in paragraph 361 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

362. Defendants deny the allegations contained in paragraph 362 of the First Amended Complaint.

363. The Hershey Defendants deny the allegations contained in paragraph 363 of the First Amended Complaint.

364. The Hershey Defendants deny the allegations contained in paragraph 364 of the First Amended Complaint.

365. Defendants deny the allegations contained in paragraph 365 of the First Amended Complaint.

366. The Hershey Defendants are without information sufficient either to admit or to deny the allegations contained in paragraph 366 of the First Amended Complaint.

367. Defendants deny the allegations contained in paragraph 367 of the First Amended Complaint.

368. Defendants deny the allegations contained in paragraph 368 of the First Amended Complaint.

369. Defendants deny the allegations contained in paragraph 369 of the First Amended Complaint.

370. Defendants deny the allegations contained in paragraph 370 of the First Amended Complaint.

371. Paragraphs 1 through 370 of this Answer are incorporated by reference herein and made a part hereof.

372. The allegations contained in paragraph 372 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

373. Defendants deny the allegations contained in paragraph 373 of the First Amended Complaint.

374. Defendants deny the allegations contained in paragraph 374 of the First Amended Complaint.

375. Defendants deny the allegations contained in paragraph 375 of the First Amended Complaint.

376. The Hershey Defendants are without information sufficient either to admit or to deny the allegations contained in paragraph 376 of the First Amended Complaint.

377. Defendants deny the allegations contained in paragraph 377 of the First Amended Complaint.

378. Paragraphs 1 through 377 of this Answer are incorporated by reference herein and made a part hereof.

379. The allegations contained in paragraph 379 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

380. The allegations contained in paragraph 380 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

381. The allegations contained in paragraph 381 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

382. The Hershey Defendants deny the allegations contained in paragraph 382 of the First Amended Complaint.

383. The Hershey Defendants deny the allegations contained in the first three sentences of paragraph 383 of the First Amended Complaint. The Hershey Defendants are without information sufficient either to admit or to deny the allegations contained in the fourth and fifth sentences of paragraph 383 of the First Amended Complaint.

384. The Hershey Defendants deny the allegations contained in paragraph 384 of the First Amended Complaint.

385. The Hershey Defendants deny the allegations contained in paragraph 385 of the First Amended Complaint.

386. The Hershey Defendants deny the allegations contained in paragraph 386 of the First Amended Complaint.

387. The Hershey Defendants deny the allegations contained in paragraphs 387 of the First Amended Complaint.

388. The allegations contained in paragraph 388 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

389. The Hershey Defendants deny the allegations contained in paragraph 389 of the First Amended Complaint, insofar as those allegations are directed toward or concern these Defendants.

390. The allegations contained in paragraph 390 of the First Amended Complaint consist of legal conclusions, to which no responsive pleading is required.

391. The allegations contained in paragraph 391 of the First Amended Complaint consist primarily of legal conclusions, to which no responsive pleading is required; otherwise, the Hershey Defendants deny the phrase “Defendants pilfered the SPEs”, insofar as this phrase is directed at the Hershey Defendants.

392. Paragraphs 1 through 391 of this Answer are incorporated by reference herein and made a part hereof.

393. The allegations contained in paragraph 393 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

394. The allegations contained in paragraph 394 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

395. The allegations contained in paragraph 395 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

396. The Hershey Defendants deny the allegations contained in paragraphs 396 of the First Amended Complaint, except for the allegations contained in paragraph 396, which allegations the Hershey Defendants are without information sufficient either to admit or to deny.

397. The allegations contained in paragraph 397 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

398. The Hershey Defendants deny the allegations contained in paragraphs 398 of the First Amended Complaint.

399. The Hershey Defendants deny the allegations contained in paragraphs 399 of the First Amended Complaint.

400. The Hershey Defendants deny the allegations contained in paragraphs 400 of the First Amended Complaint.

401. The Hershey Defendants deny the allegations contained in paragraphs 401 of the First Amended Complaint.

402. The Hershey Defendants deny the allegations contained in paragraphs 402 of the First Amended Complaint.

403. The allegations contained in paragraph 403 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

404. The Hershey Defendants deny the allegations contained in paragraphs 404 of the First Amended Complaint.

405. The Hershey Defendants deny the allegations contained in paragraphs 405 of the First Amended Complaint.

406. The Hershey Defendants deny the allegations contained in paragraphs 406 of the First Amended Complaint.

407. The Hershey Defendants deny the allegations contained in paragraphs 407 of the First Amended Complaint.

408. Paragraphs 1 through 407 of this Answer are incorporated by reference herein

and made a part hereof.

409. The allegations contained in paragraph 409 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

410. The allegations contained in paragraph 410 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

411. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 411 of the First Amended Complaint.

412. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 412 of the First Amended Complaint.

413. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 413 of the First Amended Complaint.

414. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 414 of the First Amended Complaint.

415. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 415 of the First Amended Complaint.

416. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 416 of the First Amended Complaint.

417. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 417 of the First Amended Complaint.

418. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 418 of the First Amended Complaint.

419. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 419 of the First Amended Complaint.

420. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 420 of the First Amended Complaint.

421. Paragraphs 1 through 420 of this Answer are incorporated by reference herein and made a part hereof.

422. The allegations contained in paragraph 422 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

423. The Hershey Defendants lack knowledge sufficient either to admit or to deny the allegations contained in paragraph 423 of the First Amended Complaint.

424. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 424 of the First Amended Complaint.

425. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 425 of the First Amended Complaint.

426. Paragraphs 1 through 425 of this Answer are incorporated by reference herein and made a part hereof.

427. The allegations contained in paragraph 427 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

428. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 428 of the First Amended Complaint.

429. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 429 of the First Amended Complaint.

430. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 430 of the First Amended Complaint.

431. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 431 of the First Amended Complaint.

432. Paragraphs 1 through 431 of this Answer are incorporated by reference herein and made a part hereof.

433. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 433 of the First Amended Complaint.

434. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 434 of the First Amended Complaint.

435. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 435 of the First Amended Complaint.

436. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 436 of the First Amended Complaint.

437. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 437 of the First Amended Complaint.

438. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 438 of the First Amended Complaint.



439. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 439 of the First Amended Complaint.

440. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 440 of the First Amended Complaint.

441. The Hershey Defendants are without knowledge sufficient either to admit or to deny the allegations contained in paragraph 441 of the First Amended Complaint.

442. Paragraphs 1 through 441 of this Answer are incorporated by reference herein and made a part hereof.

443. The Hershey Defendants deny the allegations contained paragraph 443 of the First Amended Complaint.

444. The Hershey Defendants deny the allegations contained paragraph 444 of the First Amended Complaint.

445. The allegations contained in paragraph 445 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

446. The allegations contained in paragraph 446 of the First Amended Complaint consist of a legal conclusion, to which no responsive pleading is required.

447. Paragraphs 1 through 446 of this Answer are incorporated by reference herein and made a part hereof.

448. The Hershey Defendants deny the allegations contained paragraph 448 of the First Amended Complaint.

## **II. AFFIRMATIVE DEFENSES<sup>1</sup>**

1. The Receiver's First, Second, Third, Fourth, Fifth, Sixth, Eleventh, and Twelfth Claims for Relief are barred because the Receiver lacks standing to pursue claims on behalf of creditors of the Receivership Estate.

2. The Receiver's First, Second, Third, Fourth, Fifth, Sixth, Eleventh, and Twelfth Claims for Relief are barred by the applicable statutes of limitations or statutes of repose.

3. Some or all of the Receiver's claims may be barred by the doctrine of *in pari delicto*.

4. The Receiver's imputed negligence or conduct, the negligence or conduct of the individuals or entities on whose behalf the Receiver asserts claims, or the negligence or conduct of third parties were the cause of the Receiver's damages, if any, and, therefore, the Receiver's damages, if any, on the Second

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<sup>1</sup> The Hershey Defendants reserve the right to assert additional affirmative defenses as additional information is discovered during this litigation.

and Third Claims for Relief are limited or barred by C.R.S. § 13-21-111 and C.R.S. § 13-21-111.5.

5. Some or all of the Receiver's claim may fail because he has not joined indispensable parties.
6. The Receiver's Twelfth Claim for Relief is barred by laches.
7. The Receiver's Twelfth Claim for Relief is barred by the doctrine of unclean hands.
8. The Receiver's Fourth and Eleventh Claims fail to state claims upon which relief can be granted.

### **III. PRAYER FOR RELIEF**

WHEREFORE, the Hershey Defendants request that this Court enter judgment in their favor and against Plaintiff on his multiple claims for relief, which are set forth in the First Amended Complaint, and, in so doing, award the Hershey Defendants their costs and attorney's fees (as may be applicable), and such other relief that the Court deems fit and proper.

### **IV. JURY DEMAND**

The Hershey Defendants hereby demand a trial by jury on all issues so triable.

Respectfully Submitted,

S/Thomas E. Goodreid  
Thomas E. Goodreid

### **CERTIFICATE OF ELECTRONIC FILING**

Pursuant to Colorado Rule of Civil Procedure 121 sec. 1-26(7), I hereby certify that an original of this **ANSWER OF THE HERSHEY DEFENDANTS, WITH JURY DEMAND** (with original signatures), which was e-filed, is maintained by my office and is available for inspection by other parties or the Court upon request.

S/Thomas E. Goodreid  
Thomas E. Goodreid