

<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>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: Patrick D. Vellone, #15284 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 rsternlieb@allen-vellone.com mgilbert@allen-vellone.com</p>	<p>Case Number: 2020CV30255 Division/Courtroom: 414</p>
<p style="text-align: center;">MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES, LLC</p>	

Harvey Sender, the duly-appointed receiver (the “Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), pursuant to C.R.C.P.

55(a), hereby asks the Clerk to enter default against Defendant Susan Markusch (“Markusch”) and Olson Real Estate Services, LLC (“Olson”).

I. Markusch and Olson are in default.

1. On January 21, 2020, the Receiver filed his Complaint in this action against Markusch and others.

2. On February 4, 2020, Markusch was personally served with the summons, complaint, and the delay reduction order entered in this case. A copy of the Affidavit of Service is attached as **Exhibit A**.

3. On March 13, 2019, Markusch moved to dismiss the Complaint.

4. On June 1, 2020, the Receiver filed his First Amended Complaint (“FAC”) naming Olson as a defendant. On June 10, 2020, Olson’s then counsel accepted services of the FAC. A copy of the Waiver and Acceptance of Service is attached as **Exhibit B**.

5. On July 31, 2021, Markusch and Olson moved to dismiss the FAC. On October 28, 2020, the Court denied their motion. On December 22, 2021, the Court granted Markusch and Olson’s joinder in the Joint Motion of Defendants Marlin S. Hershey, Performance Holdings, Inc.,¹ ACF Property Management, Inc., Alan C. Fox,² and Gary Dragul for additional time to answer or otherwise respond to the FAC. That extension granted Markusch and Olson until 21 days following the Court’s

¹ Hershey and Performance Holdings are the “Hershey Defendants.”

² Fox and ACF Property Management are the “Fox Defendants.”

determination of the Motion for Certification filed by Dragul, and the Hershey and Fox Defendants (the “Certification Motion”). On December 31, 2021, the Fox Defendants were dismissed with prejudice after settling with the Receiver.

6. On March 18, 2021, the Court granted the Certification Motion. On May 25, 2021, the Court of Appeals entered its Order denying Dragul and the Hershey Defendants’ Petition for Interlocutory Review.

7. Pursuant to C.R.C.P. 12(a)(1)(A), responses to the FAC from the defendants who sought interlocutory review – and therefore from Markusch and Olson – were due June 8, 2021.

8. On May 27, 2021, Dragul filed a Motion to Toll his deadline to respond to the FAC. On June 8, the Hershey Defendants moved for an extension of time to respond to the FAC through June 18th, and they filed their answer and jury demand on June 14th.

9. Markusch and Olson did not move to extend their time to respond to the FAC nor contact the Receiver to request an extension; their deadline to respond to the FAC therefore expired June 8, 2021.

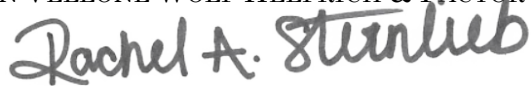
10. C.R.C.P. 55(a) provides that, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.” C.R.C.P. 55(a).

11. Because Markusch and Olson were properly served and have failed to timely file a pleading responding to the FAC, default should enter.

WHEREFORE, the Receiver asks the Clerk to enter default against Defendants Susan Markusch and Olson Real Estate Services, LLC on the FAC, and for such other relief as the Court deems proper.

Dated: June 21, 2021.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: s/ Rachel A. Sternlieb

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 21, 2021, a true and correct copy of **MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES, LLC** was filed and served via the Colorado Courts E-Filing system to the following:

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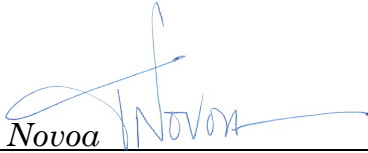
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s/ Terri M. Novoa
Allen Vellone Wolf Helfrich & Factor P.C.

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.

<input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court Denver County, Colorado Court Address: 1437 Bannock St., Denver, CO 80202	DATE FILED: February 17, 2020 11:56 AM FILING ID: B3399EF267B70 CASE NUMBER: 2020CV30255 <p style="text-align: center;">COURT USE ONLY</p>
Plaintiff/Petitioner(s): Harvey Sender, as Receiver for Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC v. Defendant/Respondent(s): Gary J. Dragul, an individual; Benjamin Kahn, an individual, The Conundrum Group, LLP, a Colorado Limited Liability Company; Susan Markusch, an individual; Alan C. Fox, an individual; ACF Property Management, Inc., a California Corporation; Marlin S. Hershey, an individual; and Performance Holdings, Inc., a Florida Corporation; John and Jane Does 1-10; and XYZ Corporations 1-10	
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: 2020CV30255 Division 414 Courtroom
AFFIDAVIT OF SERVICE	

I declare under oath that I am 18 years or older and not a party to the action and that I served Summons, Complaint, Delay Reduction Order, District Court Civil Case Cover Sheet on Susan A. Markusch in Arapahoe County/Colorado on 02/04/2020 at 8:20am at the following location: 6321 S. Geneva Cir., Englewood, CO 80111.

By handing the documents to a person identified to me as the Defendant/Respondent: Susan Markusch (print name of person served).

By identifying the documents, offering to deliver them to a person identified to me as the Defendant/Respondent who refused service, and then leaving the documents in a conspicuous place.

By leaving the documents at the Defendant/Respondent's usual place of abode with _____ (Name of Person) who is a member of the Defendant/Respondent's family and whose age is 18 years or older. (Identify family relationship)_____.)

By leaving the documents at the Defendant/Respondent's usual workplace with _____ (Name of Person) who is the Defendant/Respondent's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)

By leaving the documents with _____ (Name of Person), who as _____ (title) is authorized by appointment or by law to receive service of process for the Defendant/Respondent.

By serving the documents as follows (other service permitted by C.R.C.P 4(g) or C.R.C.P. 304(c)(d) and (e):

I have charged the following fees for my services in this matter:

Private process server

Sheriff, _____ County
Fee \$ _____ Mileage \$ _____

VERIFICATION AND ACKNOWLEDGMENT

I Ryan Quinn (name) swear/affirm under oath, that I have read the foregoing *AFFIDAVIT OF SERVICE* and that the statements set forth therein are true and correct to the best of my knowledge.

Ryan Quinn
Printed name

[Signature] 2-13-2020
Signature Date

Subscribed and affirmed, or sworn to before me in the County of Boulder, State of Colorado, this 13 day of February, 20 20. My Commission Expires: 10/25/2022

[Signature]
Notary Public

SARA FELDSTEIN-NIXON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184041937
MY COMMISSION EXPIRES OCT. 25, 2022

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>DATE FILED: June 19, 2020 11:33 AM FILING ID: AA926FFE47DC7 CASE NUMBER: 2020CV30255</p>
<p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p>Defendants: GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; SUSAN MARKUSCH, an individual; ALAN C. FOX, an individual; ACF PROPERTY MANAGEMENT, INC.; a California Corporation, MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JUNIPER CONSULTING GROUP, LLC, a Colorado limited liability company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p>▲ 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 St., Suite 1100 Denver, Colorado 80202 Phone Number: (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>WAIVER AND ACCEPTANCE OF SERVICE OF SUMMONS</p>	

I, Thomas Quinn, attorney for Olson Real Estate Services, LLC (“Olson”), a Defendant in this action, acknowledge receipt of the Plaintiff’s First Amended Complaint, First Amended Complaint Exhibit Index, Exhibits, and Summons, in the above action.

I am authorized by Olson I and do agree on behalf of Olson that service of process is accepted as provided by Rule 4 of the Colorado Rules of Civil Procedure.

Olson Real Estate Services, LLC retains all defenses or objections to the Complaint or to the jurisdiction of the Court, except for objections based on a defect in the Summons or in the service of the Summons.

6/16/2020
Date


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