

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: June 8, 2022 11:07 PM FILING ID: 8737B049CD5C5 CASE NUMBER: 2020CV30255
<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; MARLIN S. HERSHEY, an individual; PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Defendant Gary J. Dragul Christopher S. Mills, Atty. Reg. No. 42042 Paul L. Vorndran, Atty. Reg. No. 22098 Jones & Keller, P.C. 1675 Broadway, 26 th Floor Denver, CO 80202 Phone: 303-573-1600 Email: cmills@joneskeller.com pvorndran@joneskeller.com	Case No. 2020CV30255 Courtroom: 414
DEFENDANT GARY DRAGUL’S ALTERNATIVE MOTION FOR STAY	

If Mr. Dragul’s currently pending Renewed Motion for Reconsideration of Order Denying Motion to Dismiss First Amended Complaint is denied, Mr. Dragul, through counsel Jones & Keller, P.C., alternatively seeks for the Court to stay the case, and in support thereof states as follows:

Certification of Conferral: Pursuant to C.R.C.P. 121 § 1-15(8), counsel for Mr. Dragul conferred with counsel for the Receiver and the Receiver opposes the relief sought herein. Mr. Dragul also conferred with counsel for defendants Marlin Hershey and Performance Holdings, Inc., and with *Pro Se* Defendant Susan Markush, who do not oppose. Mr. Dragul did not hear back from counsel for defendants Benjamin Kahn, and the Conundrum Group, LLP by the time of filing, but believes they would not oppose, particularly since it appears they settled with the Receiver and will soon be out of the case.

INTRODUCTION

On April 12, 2018, the State of Colorado filed an indictment (“First Indictment”) against Mr. Dragul alleging nine counts of securities fraud under C.R.S. §§ 11-51-501(1)(b), 501(1)(c), and 603(1), relating to promissory notes offered to several purported investors. (Ex. 1.)¹ Trial on the First Indictment is set to commence this November 7th.

On August 15, 2018, the Commissioner of the Colorado Division of Securities (“Commissioner”) filed a complaint for injunctive and other relief (“Commissioner Action”) against Mr. Dragul and several of Mr. Dragul’s entities (“the GDA Entities”). The Commissioner immediately moved to appoint a receiver over the GDA Entities *and* Mr. Dragul personally. Harvey Sender was appointed Receiver on August 30, 2018. (*See* Ex. 2, August 30, 2018 Order Appointing Receiver (“Receivership Order”).

On March 1, 2019, the State filed a second indictment (“Second Indictment”) against Mr. Dragul alleging five counts of securities fraud under C.R.S. §§ 11-51-501(1)(b), 501(1)(c), and

¹ The State dismissed all but one of those counts before Mr. Dragul’s pending motion to bar prosecution based on the statute of limitations was ruled upon. The remaining count involves the same investors and underlying securities fraud claims, however.

603(1),² relating to multiple investors in connection with several real estate projects: Plainfield, Plaza Mall of Georgia North, and Clearwater. (Ex. 3.) Trial on the Second Indictment has not yet been set.

On January 21, 2020, the Receiver for Mr. Dragul sued Mr. Dragul and myriad other defendants alleging securities fraud claims and other civil claims arising from the same facts alleged to support the securities fraud claims (the “civil action” or “Action”). After Mr. Dragul and other defendants moved to dismiss, the Receiver filed his First Amended Complaint (“Amended Complaint”) on June 1, 2020, again alleging claims for (1) violations of the Colorado Securities Act, C.R.S. §§ 11-51-301, 11-51-401, 11-51-501, 11-51-501(1)(a)-(c) and 11-51-604(1), (2)(A), (3), (4), and (5)(a)-(b); (2) negligence; (3) negligent misrepresentation; (4) civil theft, C.R.S. § 18-4-401; (5) COCCA violations, C.R.S. § 18-17-101, *et seq.*; (7)³ breach of fiduciary duty; (11) fraudulent transfer, C.R.S. § 38-8-105(1)(a); and (12) unjust enrichment. (Ex. 4.) The facts alleged to support the Receiver’s claims, and the claims themselves, overlap almost completely with the First and Second Indictments. Consequently, to protect his Fifth Amendment rights in the criminal cases, Mr. Dragul will have to invoke the Fifth Amendment on many if not all matters in dispute in the Receiver’s civil action. Unlike in a criminal proceeding, the Receiver may use Mr. Dragul’s invocation of his constitutional rights against him. By invoking his Fifth Amendment rights, Mr. Dragul will also preclude the other defendants in this Action from obtaining critical evidence they need to defend themselves from the Receiver’s

² It also alleges misappropriation, but not in a separate count. (Ex. 3 at p. 4.) Both indictments allege comingling of funds and diversion of funds for personal use, etc. (Exs. 1 & 2.)

³ The sixth, eight, ninth, and tenth claims are not asserted against Mr. Dragul, but against other defendants.

claims. Here, the Court should stay the action because (i) there is a substantial overlap of issues in the civil and criminal cases; (ii) Mr. Dragul has been indicted; (iii) the Receiver's interests will not be materially prejudiced by the grant of a stay; (iv) Mr. Dragul's interests (and those of the other defendants) favor a stay; (v) the interests of the Court favor a stay; and, (vi) the public interest favors a stay.

Additionally, the Receivership Order expressly enjoins any civil actions against any of the people or entities in the Receivership from proceeding. By the plain terms of the Receivership Order, this Action, which has been asserted against a person in the Receivership (Mr. Dragul), must be stayed.

ARGUMENT

I. Under the Applicable Test, This Action Should be Stayed Pending Resolution of the Criminal Actions Against Mr. Dragul

“Courts, in general, have the power to stay proceedings before them.” *Town of Minturn v. Sensible Housing Co. Inc.*, 273 P.3d 1154, 1159 (Colo. 2012). Courts may stay civil proceedings pending a resolution of parallel criminal prosecutions when it is in the interest of justice. *United States v. Kordel*, 397 U.S. 1, 12 n. 27 (1970) (collecting cases). In a criminal case, a fact finder cannot draw an adverse inference from the defendant's decision to invoke his Fifth-Amendment privilege against self-incrimination, but in a civil case, the fact finder can. *Griffin v. Cal.*, 380 U.S. 609, 613-15 (1965); *People v. Ortega*, 597 P.2d 1034, 1036-37 (Colo. 1979); *McGillis Inv. Co. v. First Interstate Fin. Utah LLC*, 2015 COA 116, ¶ 27, 370 P.3d 295; *People v. Williams*, 100 P.3d 565, 566-67 (Colo. App. 2004). “Courts are afforded this discretion because the denial of a stay could impair a party's Fifth Amendment privilege against self-incrimination, extend criminal discovery beyond the limits set forth in Federal Rule of

Criminal Procedure 16(b), expose the defense’s theory to the prosecution in advance of trial, or otherwise prejudice the criminal case.” *Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1138 (S.D.N.Y. 1995) (hereafter “*Transworld*”). To prevent a defendant’s assertion of his privilege against self-incrimination from prejudicing his civil case, a court may stay civil proceedings until the criminal case is resolved. *People v. Shirfrin*, 2014 COA 14, ¶26, 342 P.3d 506.

In *People v. Shirfrin*, the Colorado Court of Appeals considered the following six factors in weighing whether to stay a civil proceeding pending the resolution of a criminal case: (1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the case, including whether the defendant has been indicted; (3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest. *Id.* at 513. Courts must weigh the plaintiff’s interest in expeditious resolution of the civil case against the defendant’s Fifth Amendment rights. *Id.*

A. The Overlap of Issues Between This Civil Action and the Criminal Cases Favors a Stay

“The first question to be resolved is the extent to which the issues in the criminal case overlap with those present in the civil case, since self-incrimination is more likely if there is a significant overlap.” *Transworld*, 886 F. Supp. at 1139. “There is considerable authority for the principle that a stay is most justified where a movant . . . is already under indictment for a serious criminal offense and is required at the same time to defend a civil action involving the same subject matter.” *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 101 (2d Cir. 2012).

In *Shifrin*, the trial court’s decision not to grant a stay turned on its determination that the defendants in that case “failed to show sufficient overlap of issues[.]” *Shifrin*, 342 P.3d at 514. The court of appeals affirmed the finding that there was insufficient overlap by stating that “the issue in defendant’s criminal proceeding – whether he had properly reported his income to the Internal Revenue Service – did not overlap with whether defendant had made misleading and deceptive representations to consumers in connection with mortgage loans.” *Id.*

Unlike in *Shifrin*, the issues presented in the criminal proceedings against Mr. Dragul are virtually identical to the issues presented in the Receiver’s civil claims against Mr. Dragul in this civil action. The First Indictment alleges securities fraud against Mr. Dragul in connection with the offer of promissory notes. (Ex. 1.) The Amended Complaint alleges Mr. Dragul’s fraudulent use of promissory notes. (Ex. 4 ¶ 63.) In fact, the Amended Complaint borrows the First Indictment’s allegations wholesale, alleging that “as alleged in First Indictment, Dragul’s scheme also involved offering promissory notes with varying interest rates and durations” and describing his alleged use of promissory notes in detail. (Ex. 4 ¶ 64.) The Receiver also alleges that Mr. Dragul failed to disclose to note investors that he was a defendant in numerous civil lawsuits brought by other note investors for failing to timely repay promissory notes issued prior to 2013 (*id.* ¶ 334(c)), which is also alleged in the First Indictment (Ex. 1). The Receiver makes the same sort of promissory note allegations, and cites the Second Indictment (which the Receiver attaches as Exhibit 22 to the Amended Complaint) to support them, in paragraph 65 of the Amended Complaint. (Ex. 4.) And he makes the same types of allegations in connection with promissory notes for the Plaza Mall of Georgia (*id.* ¶ 155), which is a subject of the Second Indictment (Ex. 3). Indeed, the Receiver sets forth several pages of allegations in connection with the Plaza Mall

of Georgia property (Ex. 4 ¶ 143-162), parroting the allegations on pages 14-21 of the Second Indictment (Ex. 3). And comparing Paragraph 61 of the Amended Complaint to page 4 of the Second Indictment shows just how closely the two track on the Plainfield property. (Exs. 4 ¶ 61; Ex. 3 at 4.)

Exhibits 25, 28, 33, 35, and 42 to the Amended Complaint identify the alleged investors upon whom the Receiver's claims are based. They overlap almost completely with those investors identified in the First and Second Indictments. (Ex. 5 (showing list of alleged investors in indictments and Amended Complaint Exs. 25, 28, 33, 35, and 42, and highlighting names appearing in both).) Moreover, though not alleged as separate counts, both indictments allege Mr. Dragul comingled funds, misappropriated funds, and diverted funds to his personal use, which also underly the Receiver's civil theft, COCCA, breach of fiduciary duty, fraudulent transfer, and unjust enrichment claims in this Action. In short, it is unclear that Mr. Dragul can say anything about the allegations in the Receiver's Amended Complaint that would not bear directly on the two indictments.

B. Mr. Dragul's Indictments Favor a Stay

The Court's inquiry into the status of the case generally focuses on whether the criminal case is in the pre- or post- indictment state. *AIG Life Ins. Co. v. Phillips*, Case No. 07-cv-00500, 2007 WL 2116383, at *2 (D. Colo. July 20, 2007). A stay is more likely warranted if an indictment has already been issued because (1) "the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued," and (2) "the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations." *Id.* Indeed, "[a] court will generally stay a civil proceeding

when a criminal investigation has ripened into an indictment against the proponent of a stay.” *Hicks v. City of New York*, 268 F. Supp. 2d 238, 242 (E.D.N.Y. 2003).

Mr. Dragul has been indicted by the State of Colorado and the criminal proceedings are ongoing. This factor weighs in favor of granting a stay of this civil action until the criminal proceedings are resolved.

C. The Receiver’s Interests Will Not be Materially Prejudiced by a Stay

As with any plaintiff in a civil action, the Receiver has an interest in the expeditious resolution of its case. *AIG Life Ins. Co.*, 2007 WL 2116383, at *3. In *Transworld*, however, the court noted that the “defendants’ interests in avoiding the quandary of choosing between waiving their Fifth Amendment rights or effectively forfeiting the civil case trumps the plaintiffs’ interest in the expeditious resolution of their case.” *Transworld*, 886 F.Supp. at 1140. Accordingly, the court granted a complete stay of the civil case until the similar criminal case was completed. *Id.* at 1146. Mr. Dragul’s Fifth Amendment rights are discussed in greater detail below, but like the court in *Transworld*, this Court should find that Mr. Dragul’s right against self-incrimination trumps the Receiver’s interest in the expeditious resolution of this Action.

Moreover, a stay here would not materially prejudice the Receiver because, if a stay is granted, the civil case likely would be resolved more efficiently because evidence gathered in the criminal prosecution will reduce the scope of discovery in the civil case. *Transworld*, 886 F. Supp. at 1140. The Receiver will not need to propound discovery to obtain the evidence already in the record in the criminal cases.

Additionally, the Receiver was appointed in August of 2018, but did not file his original complaint against Mr. Dragul until January 21, 2020. If the Receiver were concerned about

delay, he would not have waited nearly a year and half to bring suit. The Receiver has also sought and received multiple extensions in this case, including for 75 days to file the Amended Complaint after the defendants filed their original motions to dismiss, for an additional 14 days to respond to the defendants' motions to certify issues for interlocutory appeal, for an extension to respond to Mr. Dragul's original motion for reconsideration, and more. Mr. Dragul does not begrudge the Receiver these extensions. Mr. Dragul did not oppose, and given the impact of COVID, understands such extensions are sometimes necessary and has needed some himself. But that means Mr. Dragul is not solely to blame for delays—so is the Receiver.

D. Mr. Dragul's Interests Favor a Stay

The Fifth Amendment to the U.S. Constitution provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. Colorado courts have held that determining whether a stay is appropriate “generally requires balancing the interests of the plaintiff in moving forward with the litigation against the interests of a defendant asserting Fifth Amendment rights who faces the choice of being prejudiced in the civil litigation if those rights are asserted or prejudiced in the criminal litigation if those rights are waived.” *Shifrin*, 342 P.3d at 513. Thus, courts have granted stays of civil cases so defendants are not faced with “the quandary of choosing between waiving [their] Fifth Amendment rights or effectively forfeiting the civil case because of the adverse inference that can be drawn when a party invokes his Fifth Amendment rights in a civil proceeding.” *AIG Life Ins. Co.*, 2007 WL 2116383, at *3.

Inevitably, Mr. Dragul's testimony in this civil case would address the very same facts and circumstances surrounding the alleged securities at issue in the criminal proceedings.

Invoking his Fifth Amendment right against self-incrimination in the civil proceedings could create an adverse inference of Mr. Dragul's culpability in this Action, but declining to assert the Fifth Amendment privilege could result in testimony in this Action being used against him in the criminal prosecution. *See, e.g., In re Worldcom, Inc. Securities Litigation*, Case Nos. 02 Civ. 3288, 02 Civ. 4816, 2002 WL 31729501, at *7 (S.D.N.Y. Dec. 5, 2002) ("*Worldcom*"); *Louis Vuitton Malletier S.A.*, 676 F.3d at 98. Mr. Dragul has a strong and obvious interest in protecting his Fifth Amendment right against self-incrimination.

Moreover, the impact on a defendant's financial ability to defend the cases against him weighs in favor of a stay. *E.g., Worldcom*, 2002 WL 31729501, at *7-8. Here, when Mr. Dragul was personally placed into receivership under the Receiver who is asserting the claims in this Action, Mr. Dragul turned over virtually all his assets to the Receiver. Now, he must struggle to find whatever money he can to fund his defense in the criminal proceedings. Mr. Dragul cannot afford to adequately defend against the Receiver's civil action as well. If the civil action were stayed until after the criminal proceedings conclude, however, Mr. Dragul will not have to fund defenses of three cases simultaneously, which will help allow the merits of all cases to be adequately addressed, and will avoid due process concerns.

Additionally, if the Receiver's Action continues, it will immediately move into discovery. The prosecution could easily obtain the discovery the Receiver gets from Mr. Dragul,⁴ which would assuredly extend criminal discovery beyond the limits set forth in Federal Rule of Criminal Procedure 16(b). *Transworld*, 886 F. Supp. at 1138. There is also great risk the

⁴ Indeed, the prosecution is already using a slightly modified version of an expert report the Receiver used in a civil case against Mr. Dragul's family.

Receiver's civil case would expose Mr. Dragul's defense theory to the prosecution in advance of trial. *Id.* Therefore, Mr. Dragul's interests⁵ favor the grant of a stay of this civil case pending the resolution of criminal proceedings.

E. The Court's Interests Favor a Stay

Mr. Dragul recognizes that courts have an interest in keeping litigation moving to conclusion without unnecessary delay. Here, however, staying the civil case pending the resolution of the criminal case could promote judicial efficiency by increasing the possibility of settlement in this case and "may reduce the scope of discovery in the civil case [as] the evidence gathered during the criminal prosecution can later be used in the civil action." *AIG Life Ins. Co.*, 2007 WL 2116383, at *4; *see also Transworld*, 886 F. Supp. at 1140 ("Judicial efficiency also weighs in favor of granting a stay. This is not an instance where criminal prosecution is merely conjectural; defendants have been indicated and will face trial within six months . . . resolution of the criminal case may increase the possibility of settlement of the civil case due to the high standard of proof required in a criminal prosecution."). For these reasons, judicial efficiency favors a stay pending resolution of the criminal proceedings against Mr. Dragul.

F. The Public Interest Favors a Stay

Courts have held that the public interest will be served by the criminal prosecution where the issues in the criminal and civil cases overlap. *See, e.g., Transworld*, 886 F. Supp. at 1140

⁵ The interests of the other defendants in this action also warrant a stay. They are alleged to have coordinated with Mr. Dragul, and Mr. Dragul's testimony is thus necessary for their defense. However, a court may admit into evidence a nonparty witness's invocation of his Fifth Amendment rights and allow the fact finder to draw an adverse inference against a party. *State ex rel. Weiser v. Castle Law Group, LLC*, 457 P.3d 699, 713 (Colo. App. 2019). Mr. Dragul is a party here, not a non-party, and the other defendants would be even more prejudiced by Mr. Dragul's invocation of his Fifth Amendment rights.

("Because of the overlapping issues in the criminal and civil cases, the criminal prosecution will serve to advance the public interests at stake here." (internal citations omitted)). Given the substantial overlap of issues in the civil and criminal cases involving Mr. Dragul, a stay would not harm the public interest and should be granted.

G. The Fact the Commissioner Action Was Stayed Demonstrates a Stay is Appropriate Here

In October 2018, after the First Indictment and Commissioner Action were filed and the Receiver was appointed, but before the Second Indictment was filed, Mr. Dragul moved to stay the Commissioner Action on account of the First Indictment. (Ex. 6.) The Commissioner took no position on that motion. The court overseeing the Commissioner Action then *granted* that motion for stay. (Ex. 7.) While actions asserted by the Receiver were carved out from that stay, it is clear the parties and court were contemplating actions by the Receiver against third parties, not an action by the Receiver against not only a party *in* the Receivership, but also the actual *defendant* in the criminal proceedings whose Fifth Amendment rights served as the basis to stay the Commissioner Action.

Since that initial stay order, the Commissioner has repeatedly filed joint status reports requesting the stay be extended, which the court in the Commissioner Action has granted every time. There is no discernable reason why, if a stay is appropriate for the Commissioner Action, it is not also appropriate here.

II. The Receivership Order Expressly Enjoins this Action from Continuing

Under Paragraph 26 of the Receivership Order, "all actions in equity or at law against the Receiver, *Dragul*, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court." (Ex. 2

(emphasis added).) There are very good reasons for that. Enjoining or staying actions against the persons or entities in receivership prevents the receiver from having to defend against those actions, which would require him to use the resources in the receivership estate, while simultaneously trying to manage the estate. Without such an injunction or stay, a receiver would be obligated to defend such civil actions to protect the assets of the estate from a judgment. Here, the Receiver sued Mr. Dragul, who is in the Receivership. Under the plain language of Paragraph 26, the Receiver was enjoined from doing so, and the already-filed Action must be stayed. If it were not stayed, the Receiver would likely be bound to defend the civil action against Mr. Dragul—meaning the Receiver would have to pay, out of the Receivership Estate, for Mr. Dragul’s defense costs and any judgment entered against Mr. Dragul in connection with the Receiver’s own claims. This would certainly be a strange result, but also an unavoidable one since the Receiver sued a person actually in the Receivership. By staying the case as required under Paragraph 26 of the Receivership Order, this strange result is avoided.

CONCLUSION

While Mr. Dragul urges the Court to grant his Renewed Motion for Reconsideration of Order Denying Motion to Dismiss First Amended Complaint, if the Court denies that motion, it should stay the case. The six factors courts consider when deciding whether to stay a civil case pending the resolution of a criminal proceeding favor the grant of a stay here. Staying civil cases while related criminal proceedings are pending is not particularly unusual—in very similar circumstances also involving alleged securities fraud, the Arapahoe County District Court did just that. (Ex. 8.) The Receivership Order also compels a stay. For those reasons, Mr. Dragul

respectfully requests that the Court grant a stay of this civil case pending the conclusion of the State of Colorado's criminal actions against him.

Dated this 8th day of June, 2022.

JONES & KELLER, P.C.

s/ Christopher S. Mills

Christopher S. Mills, #42042

Paul L. Vorndran, #22098

*ATTORNEYS FOR DEFENDANT GARY J.
DRAGUL*

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2022, a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S ALTERNATIVE MOTION FOR STAY** was filed and served via the Colorado Court E-filing system to the following:

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DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: Jan 18 2020 1:37:58 PM FILING ID: 87470049684815D CASE NUMBER: 2020CR310255
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. GARY JULE DRAGUL, DOB 05/07/1962, Defendant.	▲ COURT USE ONLY ▲
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COLORADO STATE GRAND JURY INDICTMENT	

- COUNT ONE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to William and Adelyn Parker}
- COUNT TWO: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to William Parker, Jr.}
- COUNT THREE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Ray Webb Parker}
- COUNT FOUR: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Marshall Parker}
- COUNT FIVE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Patricia Marks}

COUNT SIX: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S.
(Class 3 Felony) {50052} {as to Chad and Kerri Miller}

COUNT SEVEN: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S.
(Class 3 Felony) {50052} {as to William Detterer}

COUNT EIGHT: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S.
(Class 3 Felony) {50052} {as to James and Susan Hess}

COUNT NINE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S.
(Class 3 Felony) {50053} {as to all investors}

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. GARY JULE DRAGUL, DOB: 05/07/1962 Defendant.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
CYNTHIA H. COFFMAN, Attorney General DANIEL A. PIETRAGALLO #41794 * Assistant Attorney General MICHAEL J. BELLIPANNI #24421 * Senior Assistant Attorney General 1300 Broadway, 9 th Floor Denver, CO 80203 (720) 508-6000 * Counsel Of Record	Case No.: 2017CR001 Ct. Rm. 259
COLORADO STATE GRAND JURY INDICTMENT	

Of the 2017-2018 term of the City and County of Denver Court in the year 2018, the 2017-2018 Colorado State Grand Jurors, chosen, selected and sworn in the name and by the authority of the People of the State of Colorado, upon their oaths, present the following:

ESSENTIAL FACTS

Gary Jule Dragul (hereinafter DRAGUL) is the president of and registered agent for GDA Real Estate Services, LLC, a Colorado company located in Arapahoe County. At all times relevant herein, DRAGUL managed GDA Real Estate Services, LLC (hereinafter referred to as GDA). GDA's primary business is to take investor money and derive profit from organizing and establishing limited liability companies (LLC's) that purchase and manage commercial shopping centers and other commercial real estate ventures. DRAGUL and GDA would offer investors membership interests in these LLC's, with the expectation that the investors would profit from the future stream of income, as well as the potential future appreciation of the property. Many of these investment opportunities resulted in significant losses to the investors.

In addition to selling membership interests in numerous LLC's, DRAGUL and GDA also offered investors promissory notes with varying interest rates and durations (typically between three and eighteen months). Most promissory notes were to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. Despite being considered securities, which required registration with the Securities Exchange Commission and the Colorado Division of Securities, DRAGUL failed to register any of the promissory notes and was never licensed to sell securities.

As part of the investigation by the Colorado Division of Securities, DRAGUL and GDA provided copies of business records, including but not limited to: general ledgers, balance sheets, income statements, offering documents, emails, and copies of promissory notes. Based on a review of the GDA general ledger and other GDA business documents, it appears that GDA accrued millions of dollars in unsecured debt related to promissory notes issued in 2007 and 2008.

Based on a review of the GDA general ledger, DRAGUL raised significant capital through promissory notes issued in both 2007-2008 and 2013. Despite still owing over \$4,000,000 on the 2007-2008 promissory notes, DRAGUL and GDA failed to disclose this material fact when soliciting new promissory notes in 2013.

By December 31, 2012 GDA had a total outstanding debt that reflects negative equity of over \$8.7 million and a cash deficit of over \$290,000. This includes over \$4 million that was owed pursuant to unpaid overdue promissory notes issued by DRAGUL and GDA in 2007 and 2008. These unpaid notes and other financial issues became the subject of numerous lawsuits that were filed against DRAGUL and GDA, between 2011 and 2013. Despite these pending lawsuits and the substantial debt, DRAGUL and GDA failed to disclose such material information to investors when they offered additional promissory notes in 2013.

Additionally, DRAGUL and GDA incurred substantial investor debt and defaulted on several promissory notes, which ultimately led to them being named as Defendants in numerous civil law suits, including but not limited to the following:

- 2011CV2517 (Arapahoe County) – DRAGUL and GDA were sued by Laura Evans for two unpaid overdue promissory notes from 2008, which totaled \$200,000. On or about March 31, 2013 the parties entered into a confidential settlement agreement to resolve the case.
- 2012CV1317 (Arapahoe County) – DRAGUL and GDA were sued by Alan Fishman for an unpaid overdue promissory note for \$75,000, which was issued in 2008. At the time the lawsuit was filed on July 17, 2012, the complaint alleged that Mr. Fishman was still owed his entire principal amount of \$75,000 plus interest.
- 2012CV1869 (Arapahoe County) – DRAGUL and GDA were sued by First Citizens Bank and Trust Company for defaulting on promissory notes issued in 2007. At the time the lawsuit was filed on October 9, 2012, First Citizens sought payment from the following entities, in the following amounts:
 - Syracuse, LLC (a GDA company) defaulted on a promissory note in the amount of \$4.5 million dollars.
 - DRAGUL personally defaulted on a home equity line of credit and promissory note in the amount of \$1.33 million dollars.
 - GDA and MC Liquor 02, LLC defaulted on a promissory note in the amount of \$607,312.
 - DRAGUL personally guaranteed all of the above loans.
- 2013CV200319 (Arapahoe County) – DRAGUL and GDA were sued by their landlord “8301 East Prentice Avenue, LLC”, for eviction and possession of the property. The lawsuit alleged that DRAGUL and GDA failed to vacate the office space after their lease expired.
- 2013CV31341 (Arapahoe County) – DRAGUL and GDA were sued by Craig Evans for two unpaid overdue promissory notes from 2007 and 2008, which totaled \$100,000. At the time the lawsuit was filed on October 7, 2013, the complaint alleged that Mr. Evans was only repaid \$12,095.88.

Neither the lawsuits nor the status of the underlying promissory notes on which DRAGUL and GDA defaulted were disclosed to the victims named herein.

Beginning in January of 2013 and continuing through August of 2013, DRAGUL and GDA issued thirty-one (31) promissory notes to twenty-one (21) investors, which raised approximately \$2.4 million in new capital. The total amount of those promissory notes exceeded \$3 million, because DRAGUL and GDA rolled over prior investments into some of the new promissory notes.

Of those thirty-one promissory notes that were issued in 2013, only ten notes with five investors (Steven Kris, Eugene Risser, LEXICON, William Oehme, and Madelyn Buckwalter) were repaid consistent with their original terms. As of 2016, approximately twenty of the promissory notes were still unpaid and outstanding.

The promissory notes issued by DRAGUL and GDA constitute “securities” pursuant to § 11-51-201 (17) C.R.S. Accordingly, such investments are subject to the provisions of the Colorado Securities Act.

In soliciting the promissory notes, DRAGUL made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in numerous civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors. Specifically, some of the 2013 promissory note investors were paid back consistent with the terms of their promissory notes, while DRAGUL and GDA withheld payments to other similarly situated investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC)

In order to solicit the 2013 GDA promissory notes, DRAGUL used an unregistered promoter from North Carolina named Marlin Hershey to offer GDA promissory notes. Based on internal emails, GDA was desperately trying to raise additional operating capital to fund the business. Hershey approached several of the victims with offerings for GDA promissory notes. He represented that DRAGUL and GDA were very successful and that DRAGUL was worth millions of dollars. Hershey was paid a ten percent commission for finding investors for the GDA promissory notes. Hershey recruited a number of investors from Pennsylvania, North Carolina, Florida, and Texas. While most investors from Colorado were selectively repaid in full, DRAGUL and GDA stopped making payments to many out-of-state investors that were recruited by Marlin Hershey.

Additionally, DRAGUL and GDA engaged in a course of business that involved comingling funds from numerous LLC accounts in order to make payments related to GDA's operating costs. Specifically, a review of the general ledger, balance sheets, and emails indicates that DRAGUL was transferring money from various LLC's and listing the debt as notes payable to those entities in the GDA general ledger. This appears to be a regular business practice, as investigators found frequent emails (almost daily during the time period when promissory notes were being solicited) to DRAGUL advising him that he would need substantial capital to fund certain overdrawn account(s) and asking which other account(s) he would like to draw funds from.

DRAGUL also misappropriated investor funds for personal use by diverting substantial amounts of money to accounts held personally by him and his wife. An analysis of inflows for GDA between January 1, 2013 and August 30, 2013, shows that GDA solicited and received investor funds of over \$2.37 million dollars. During that same time period, an analysis of outflows for GDA shows that DRAGUL transferred a total of over \$3.8 million to his personal bank accounts and over \$2.1 million to his wife Shelly Dragul's personal bank accounts.

DRAGUL and GDA continued the acts, practices and course of business designed to defraud investors in and between January 1, 2013 and ending on or about August 30, 2013. After obtaining investor funds, DRAGUL and GDA continued to solicit, accept, and hold investor funds, knowing that they could not generate the promised returns. DRAGUL used investor funds to pay personal expenses and continued to make material misstatements and omissions to the investors after their initial investments. DRAGUL thereby induced investors to maintain their investments with him, and to make subsequent investments. These resulting business practices operated as a fraud or deceit upon DRAGUL and GDA's investors.

COUNT ONE

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to William and Adelyn Parker}

On or about and between December 1, 2012 and January 16, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to William and Adelyn Parker, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT TWO:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to William Parker, Jr.}

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to William Parker, Jr., directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT THREE

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Ray Webb Parker}

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to Ray Webb Parker, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT FOUR:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Marshall Parker}

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to Marshall Parker, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Counts One through Four are as follows:

1. The Parker family resides in Shelby, North Carolina and was introduced to GARY DRAGUL and GDA through Marlin Hershey. The Parkers also had other investments in GDA LLC's.
2. On or about January 7, 2013, William and Adelyn Parker invested \$200,000 in a promissory note with GDA. The Parkers rolled over \$100,000 from a prior investment and sent GDA a check for \$100,000 dated January 14, 2013.
3. On or about January 7, 2013, William Parker, Jr. invested \$50,000 in a promissory note with GDA. William Parker, Jr. sent GDA a check for \$50,000 dated January 10, 2013.
4. On or about January 7, 2013, Ray Webb Parker invested \$50,000 in a promissory note with GDA. Ray Webb Parker sent GDA a check for \$50,000 dated January 10, 2013.
5. On or about January 7, 2013, Marshall Parker invested \$50,000 in a promissory note with GDA. Marshall Parker sent GDA a check for \$50,000 dated January 10, 2013.
6. Each of the above-referenced promissory notes was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. Each loan was to be repaid in full, with interest, within eighteen months.

7. In reference to William and Adelyn Parker, DRAGUL and GDA issued interest payments for the first six months, but only issued six principal payments thereafter. It should be noted that those six payments were spread out between August of 2013 and November of 2014, indicating an inconsistent payment history. The Parkers have not been issued a payment by DRAGUL or GDA on the promissory note since November of 2014.
8. In total, the Parkers have only been repaid approximately \$111,856.03 from the initial promissory note investment of \$200,000 in 2013.
9. In reference to William Parker, Jr., Ray Webb Parker, and Marshall Parker, DRAGUL and GDA issued interest payments for the first six months, but only issued three principal payments thereafter. William Parker, Jr., Ray Webb Parker, and Marshall Parker have not been issued a payment by DRAGUL or GDA on any of their promissory notes since January of 2014.
10. In total, William Parker, Jr., Ray Webb Parker, and Marshall Parker have only been repaid approximately \$14,637.11 from each of their initial promissory note investments of \$50,000 in 2013.
11. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
 - DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
 - DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
 - DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
 - DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT FIVE:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Patricia Marks}

On or about and between January 1, 2013 and January 17, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to Patricia Marks, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Five are as follows:

12. Patricia Marks is a resident of Lancaster, Pennsylvania and was introduced to GARY DRAGUL and GDA through Marlin Hershey.
13. On or about January 11, 2013, Patricia Marks invested \$50,000 in a promissory note with DRAGUL and GDA. Ms. Marks sent GDA a check for \$50,000 dated January 15, 2013.
14. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.
15. Ms. Marks was told that her money would be invested in a Senor Frogs restaurant in Las Vegas. An analysis of the bank accounts in this case indicates that the money was transferred to DRAGUL's personal bank accounts and used for personal expenses.
16. DRAGUL and GDA issued interest payments for the first six months, but only issued four principal payments thereafter. Ms. Marks has not been issued any payments by DRAGUL or GDA on the promissory note since December of 2013.
17. In total, Ms. Marks has only been repaid approximately \$30,402.68 from her initial investment of \$50,000 in 2013.

18. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT SIX:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Chad and Kerri Miller}

On or about and between January 1, 2013 and February 7, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to Chad and Kerri Miller, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Six are as follows:

19. Chad and Kerri Miller are residents of Lancaster, Pennsylvania and were introduced to GARY DRAGUL and GDA through Marlin Hershey. The Millers also had other investments in GDA LLC's.

20. On or about January 17, 2013, Chad and Kerri Miller invested \$50,000 in a promissory note with DRAGUL and GDA. The Millers sent GDA a check for \$50,000 dated February 4, 2013.
21. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.
22. DRAGUL and GDA issued interest payments for the first six months, but only issued four principal payments thereafter. The Millers have not been issued a payment by DRAGUL or GDA on the promissory note since December of 2013.
23. In total, Chad and Karri Miller have only been repaid approximately \$19,856.96 from their initial investment of \$50,000 in 2013.
24. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
 - DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
 - DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
 - DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
 - DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT SEVEN:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to William Detterer}

On or about and between February 7, 2013 and February 13, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to William Detterer, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Eight are as follows:

25. William Detterer is a resident of Reading, Pennsylvania and was introduced to GARY DRAGUL and GDA through Marlin Hershey. Mr. Detterer also had other investments in GDA LLC's.
26. On or about February 7, 2013, William Detterer invested \$150,000 in a promissory note with DRAGUL and GDA. Mr. Detterer sent GDA a check for \$150,000 which was dated February 13, 2013.
27. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.
28. Mr. Detterer received interest payments for the first six months, but only received two payments thereafter. DRAGUL and GDA failed to make any additional principal payments after October of 2013.
29. As of late 2016, Mr. Detterer had only been repaid approximately \$31,391.71 from his initial investment of \$150,000 in 2013.
30. Mr. Detterer was forced to file a lawsuit against DRAGUL and GDA in 2015, in Arapahoe County (2015CV32922), for defaulting on the promissory note. DRAGUL and GDA agreed to settle the debt by paying \$121,000 in \$1,250 increments, over 96 months with no interest.

31. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT EIGHT:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to James and Susan Hess}

On or about and between March 5, 2013 and March 8, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to James and Susan Hess, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Nine are as follows:

32. James and Susan Hess are residents of Lancaster, Pennsylvania and were introduced to GARY DRAGUL and GDA through Marlin Hershey. The Hess family also had other investments in GDA LLC's.

33. On or about March 5, 2013, James and Susan Hess invested \$75,000 in a promissory note with DRAGUL and GDA. James and Susan Hess rolled over \$44,656.05 from a previous investment and sent GDA two checks totaling \$30,343.95 that were dated March 8, 2013.
34. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.
35. DRAGUL and GDA issued interest payments for the first six months, but only issued one principal payment thereafter. DRAGUL and GDA have not issued any payment on this promissory note since October of 2013.
36. In total, James and Susan Hess have only been repaid approximately \$8,879.70 from their initial investment of \$50,000 in 2013.
37. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL failed to disclose to investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
 - DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
 - DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
 - DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
 - DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT NINE:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to all investors}

On or about and between January 1, 2013 and August 30, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including William and Adelyn Parker, William Parker, Jr., Ray Webb Parker, Marshall Parker, Patricia Marks, Chad and Kerri Miller, William Detterer, James and Susan Hess, Calvin Ewell, MSHR Inc., Jane Tennis, Eagle Group V, Linford Weaver, Nash Daswani, SC Advisors 7 LLC, Madelyn Buckwalter, and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offense as set forth in Count Nine are as follows:

38. For approximately eight months, between January 1, 2013 and August 30, 2013, DRAGUL and GDA made numerous fraudulent sales of securities, based on materially false statements and omissions to the following investors: William and Adelyn Parker, William Parker, Jr., Ray Webb Parker, Marshall Parker, Patricia Marks, Chad and Kerri Miller, William Detterer, James and Susan Hess, Calvin Ewell, MSHR Inc., Jane Tennis, Eagle Group V, Linford Weaver, Nash Daswani, and SC Advisors 7 LLC.
39. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.
40. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on and between January 1, 2013 and August 30, 2013, include one or more of the following:
 - a) William and Adelyn Parker, residents of Shelby, North Carolina, invested approximately two hundred thousand dollars (\$200,000.00) in a promissory note on or about January 7, 2013.
 - b) William Parker, Jr., a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in a GDA promissory note on or about January 7, 2013.
 - c) Ray Webb Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in a GDA promissory note on or about January 7, 2013.

- d) Marshall Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in a GDA promissory note on or about January 7, 2013.
- e) Patricia Marks, a resident of Lancaster, Pennsylvania invested approximately fifty thousand dollars (\$50,000.00) in a GDA promissory note on or about January 11, 2013.
- f) Chad and Kerri Miller, residents of Lancaster, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00), in a GDA promissory note on or about January 17, 2013.
- g) William Detterer, a resident of Lancaster, Pennsylvania, invested approximately one hundred and fifty thousand dollars (\$150,000) in a GDA promissory note on or about February 7, 2013.
- h) James and Susan Hess, residents of Lancaster, Pennsylvania, invested approximately seventy-five thousand hundred dollars (\$75,000) in a GDA promissory note on or about March 5, 2013.
- k) Calvin Ewell, a resident of East Earl, Pennsylvania, invested approximately two hundred thousand dollars (\$200,000) in a GDA promissory note on or about January 7, 2013.
- l) MSHR Inc., a company based in Huntersville, North Carolina, invested approximately one hundred and twenty-five thousand dollars (\$125,000.00) in two separate GDA promissory notes on or about January 7, 2013.
- m) Jane Tennis, a resident of Lititz, Pennsylvania, invested approximately one hundred and fifty thousand dollars (\$150,000) in a GDA promissory note on or about February 7, 2013.
- n) Eagle Group V (Eric Blow), a company based in Lititz, Pennsylvania, invested approximately fifty thousand dollars (\$50,000) in a GDA promissory note on or about March 15, 2013.
- o) Linford Weaver, a resident of East Earl, Pennsylvania, invested approximately two hundred thousand dollars (\$200,000.00) in two GDA promissory notes on or about June 10, 2014.
- p) Nash Daswani, a resident of Houston, Texas, invested approximately one hundred and twenty-five thousand dollars (\$125,000.00) in a GDA promissory note on or about April 24, 2013.
- q) SC Advisors 7 LLC, a company based in Fort Mill, South Carolina, invested approximately five hundred and fifty thousand dollars (\$550,000) in five separate GDA promissory notes between or about June 6, 2013 and June 24, 2013.

41. In connection with the fraudulent sale of these securities, DRAGUL and GDA engaged in a course of business which operated as a fraud, in part, by accepting funds into this investment scheme and failing to disclose material facts to investors prior to making their investments. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and failure to disclose, are described in the narrative of Essential Facts, and the paragraphs following Counts One through Eight, each of which are hereby incorporated by reference.
42. DRAGUL and GDA never told the investors of the true risks associated with the investments. DRAGUL and GDA made and maintained numerous untrue statements of material facts to these investors prior and subsequent to their investments with him. DRAGUL and GDA also failed to disclose material information to these investors. The investments remain unpaid and past due.
43. In addition to failing to disclose the actual financial condition of DRAGUL and GDA, as well as the actual risks associated with the GDA promissory note investments, DRAGUL and GDA engaged in a course of selective repayment. Colorado investors were also repaid, while many out-of-state investors stopped receiving any promissory note payments from DRAGUL and GDA.

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By:



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Assistant Attorney General
Criminal Justice Section

The 2017 - 2018 State Grand Jury presents the within Indictment, and the same is hereby ORDERED FILED this 12th day of April, 2018.

Pursuant to C.R.S. 13-73-107, the Court hereby designates the County of Arconce County, Colorado, as the county of venue for the purposes of trial.

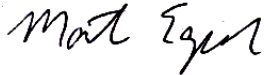


MICHAEL A. MARTINEZ
Chief Judge, Second Judicial District

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF v. Defendant(s) GARY DRAGUL et al.	DATE FILED August 30, 2018 11:07 AM CASE NUMBER: 2018CV33011 CASE NUMBER: 2020CV30255
△ COURT USE ONLY △	
Case Number: 2018CV33011 Division: 424 Courtroom:	
Order: (Proposed) Stipulated Order Appointing Receiver also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC)	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 8/30/2018



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>BY THE COURT</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p>STIPULATED ORDER APPOINTING RECEIVER</p>	

THIS MATTER having come before this Court on the Stipulated Motion to Appoint Receiver (the “Motion”) filed by the Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado and Defendants Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, Inc. (“GDAREM”), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).
2. Dragul is an individual and a resident of Colorado, and the manager of

GDARES and GDAREM, among other businesses.

3. GDARES is a Colorado limited liability company with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

4. GDAREM is a Colorado corporation with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

5. The Parties have stipulated to the appointment of a Receiver without bond or other security for Dragul, GDARES, and GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.

6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, the Parties have stipulated that the Commissioner is entitled to entry of this Order.

7. Nothing in this stipulated Order shall be deemed an admission by Dragul to any allegations or as a waiver of any defenses thereto or limit Dragul's 4th, 5th, or 6th Amendment rights or other Constitutional and statutory protections and privileges afforded to any criminal defendant, or prevent him from invoking such rights in his personal capacity. Nothing in this Order operates as a waiver or an abrogation of the attorney-client privilege held by Dragul in his personal capacity.

8. Harvey Sender of Sender & Smiley LLC, has been determined to be suitable to serve as Receiver for Dragul (as such term is defined below in this

Order), GDARES and GDAREM, as set forth in this Order. Mr. Sender's business address is 600 17th Street, Suite 2800, Denver, Colorado 80202.

IT IS THEREFORE ORDERED THAT:

9. Harvey Sender ("the Receiver") is hereby appointed as Receiver for Dragul (limited to the definition of the "Receivership Property" or "Receivership Estate" as defined herein), GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds (the "Receivership Property," and altogether this "Receivership Estate"). Except that the personal residence of Dragul, located at 10 Cherry Vale Drive, Englewood, Colorado 80113, shall not be considered "Receivership Property" or part of the "Receivership Estate," unless the Receiver determines that an improvement to or increase in equity in such residence is directly related to the proceeds from the sale of the securities or matters referenced in the Complaint, in which case the improvements or equity shall be considered "Receivership Property" or part of the "Receivership Estate." Consistent with

Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make recommendations to this Court for the ongoing operation, sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

10. Dragul, GDARES, and GDAREM, and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (collectively, the "Representatives"), are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials; together with stock certificates or other indicia of

ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, and GDAREM and their Representatives, when necessary or when requested (subject to Dragul's Constitutional protections, including the Fifth Amendment), shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related entities or companies, to the Receiver or his agents, without compensation therefor. Any claims for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver, except that Dragul maintains all such privileges in his personal capacity. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

11. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active

participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, GDARES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

12. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in Paragraphs 9 and 10 of this Order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turn over the Receivership Property after receiving notice, the Receiver shall file a Request for an Order to Show Cause with this Court.

13. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated

herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

(a) To take from Dragul's, GDARES' and GDAREM's Representatives, and all persons acting in participation with Dragul, GDARES and GDAREM, and from Creditors and Creditors' Representatives, immediate possession and control of all of the assets of Dragul, GDARES and GDAREM, including the Receivership Property, to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with Dragul, GDARES and GDAREM, and Creditors and Creditors' Representatives;

(b) To exercise such control over all subsidiaries and related companies owned or managed by Dragul, GDARES and GDAREM, consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies, including to exercise all rights of Dragul, GDARES and GDAREM to elect new officers, directors, or management of the subsidiaries and related companies, in their respective capacities and not as an assignee;

(c) To take charge of the subject Receivership Property, regardless of where such property is located, including, but not limited to, bank accounts, cash, checks, drafts, notes, security deposits, bonds, books, records, contracts, claims, leases, files, furniture, certificates, licenses, fixtures and equipment, property located in any real property either owned or leased by Dragul, GDARES and GDAREM and any personal property located in storage facilities;

(d) As appropriate, to take possession of offices of Dragul, GDARES

and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents, subject to any privileges maintained by Dragul in his personal capacity;

(e) To collect in a timely fashion all accounts receivable and other obligations due to Dragul, GDARES and GDAREM, including, as necessary to negotiate and deposit checks made payable to them into accounts maintained by the Receiver and as necessary to review mail directed to Dragul, GDARES and GDAREM and their Representatives in order to collect incoming accounts receivable and other obligations due and owing to Dragul, GDARES and GDAREM;

(f) To contract for and obtain such services as utilities, supplies, equipment and goods as is reasonably necessary to manage, preserve, and protect the Receivership Property as the Receiver may reasonably deem necessary; however, no contract shall extend beyond the termination of the Receivership without the permission of the Court;

(g) To obtain, review and analyze Dragul, GDARES and GDAREM books and records relating to the Receivership Property, including without limitation accounting records, banking records, tax records, and any other books or documents necessary to perform the duties of the Receiver;

(h) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

(j) To open and maintain accounts at a financial institution insured by the federal government in the name of the Receiver and to deposit all sums received by the Receiver into such account and to make such withdrawals as are necessary to pay the reasonable costs and expenses incurred by the Receiver;

(k) To exercise all rights of an owner incidental to the ownership of the Receivership Property;

(l) To hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver's duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of companies affiliated with the Receiver, or other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver's discretion;

(m) In the Receiver's discretion as appropriate, to hire and pay employees with the necessary skills and experience to operate GDARES and GDAREM efficiently and with least amount of cost or expense, and to preserve the assets of GDARES and GDAREM and the Receivership Estate.

(n) After consultation with the Commissioner and agreement on the amount and funding of a budget related thereto, to institute such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order to protect the Receivership Property, and to prosecute causes of action of Dragul, GDARES and GDAREM against third parties in this or any other jurisdictions, including foreign countries;

(o) After consultation with the Commissioner and agreement on the amount and funding of a budget related to anticipated out of pocket expenses related thereto, to retain special counsel, and other professionals as needed, on a contingency fee basis containing commercially reasonable terms, as determined by the Receiver in the exercise of his reasonable business judgment, to recover possession of the Receivership Property from any persons who may now or in the future be wrongfully possessing Receivership Property or any part thereof, including claims premised on fraudulent transfer or similar theories, in this or any other jurisdictions, including foreign countries;

(p) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety

bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

(q) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(r) To notify and make demands on any insurers under insurance policies and issuers of any such policies or surety bonds affecting Receivership Property for the turnover and payment of proceeds to the Receiver for the benefit of Creditors, and as necessary, and after consultation with Plaintiffs and agreement on the amount and funding of a budget related thereto, commence litigation against such insurers and/or sureties in order to recover the proceeds of such insurance policies and surety bonds for the benefit of Dragul, GDARES and GDAREM and their creditors; and further provided that, in connection with any such claims or causes of action, the Receiver shall not be deemed to be asserting claims of Dragul, GDARES and GDAREM pursuant to any "insured vs. insured" exclusions that may be set forth in such insurance policies or surety bonds, but rather shall, in accordance with subparagraph (p) below, be deemed to be prosecuting claims of creditors of Dragul, GDARES and GDAREM in connection therewith;

(s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of

Creditors, in order to assure the equal treatment of all similarly situated Creditors:

(t) In the Receiver's discretion as appropriate, to consider the potential sale of assets of Dragul, GARDES, and GARDEM to a third-party or to sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales price of less than \$10,000;

(u) To establish a procedure for the assertion of claims against Dragul, GDARES and GDAREM or the Receivership Property, for the resolution of any disputes regarding such claims, and for the distribution of the proceeds of the Receivership Property;

(v) To issue subpoenas, institute, prosecute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection, preservation and maintenance of the Receivership Assets or proceeds therefrom;

(w) To do such other and further lawful acts as the Receiver reasonably deems necessary for the effective recovery of the Receivership Property, and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or the laws of the United States; and

(x) To do any and all acts necessary, convenient or incidental to the foregoing provisions of this Order and this equity receivership.

14. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

15. To the extent they have not already done so, Dragul, GDARES and GDAREM and their representatives, Creditors, and Creditors' Representatives, and their agents, are ordered to deliver over immediately to the Receiver, or his agents, all Receivership Property, including, but not limited to, unpaid bills, bank accounts, cash, checks, drafts, notes, security deposits, books, records, contracts, claims, leases, deeds, files, furniture, certificates, licenses, fixtures, escrow, sales contracts, equipment, and stock certificates or other evidence of ownership related to the Subsidiaries, relating to the Receivership Property and shall continue to

deliver immediately to the Receiver any such property received at any time in the future.

16. Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

17. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, or any other person acting in t participation with Dragul, GDARES and GDAREM and their Representatives, through the appropriate court of appropriate jurisdiction, to comply with any of the Orders of this Court.

18. The Receiver shall be compensated for his services at the rate of \$400 per hour, together with reimbursement for all reasonable costs and expenses incurred in connection with his duties, which compensation and reimbursement shall be paid from the assets of the Receivership Estate, proceeds of the disposition of Receivership Property, or the proceeds of loans secured by the Receiver.

19. Except as may be expressly authorized by the Court, Dragul, GDARES and GDAREM and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them, are enjoined from:

- (a) Collecting any revenues from the Receivership Property, or withdrawing funds from any bank or other depository account relating to the Receivership Property;
- (b) Binding, or purporting to bind, Dragul, GDARES and GDAREM or the Receivership Estate, to any contract or other obligation;
- (c) Holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity, except with the permission of the Receiver or by further order of this Court; and
- (d) Otherwise interfering with the operation of the Receivership Property, or the Receiver's discharge of his duties hereunder.

20. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

21. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of

Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

22. The Receiver is directed and empowered to apply revenues, incomes and sales proceeds collected by the Receiver:

(a) First, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver or employed by the Receiver to operate

GDARES or GDAREM;

(b) Second, to the payment of any outstanding Receiver's

Certificates;

(c) Third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) Fourth, to the payment of any unsecured tax obligations determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) Fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) Sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

23. The debts or liabilities incurred by the Receiver in the course of his operation and management of the Receivership Property, whether in the Receiver's name or in the name of the Receivership Property, shall be the debts and

obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

24. The Receiver shall enjoy and have the judicial immunity usually applicable to receivers in law and equity. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver are protected and privileged with the same judicial immunity as the Receiver has under this Order.

25. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.

26. It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate without first seeking relief from this stay of proceedings.

27. The Receiver shall continue in possession of the Receivership Property until the completion of the disposition of this litigation which may anticipate the wind-up of the affairs of Dragul, GDARES and GDAREM.

28. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning

such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable form or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information, except that information subject to the attorney-client privilege held by Dragul in his personal capacity shall remain privileged. Any such claimed privileged information, or information that may reasonably be considered to be privileged information, obtained by Receiver or commingled with other information shall be disgorged by the Receiver and notice given to Dragul regarding the privileged information and its disposition by the Receiver. In the event that the Receiver questions or disputes that any such information is privileged, the dispute shall be submitted to the Court, together with the disputed information for in camera review.

29. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further

instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

31. The Receiver shall take appropriate action as necessary with respect to the January 20, 2015 "CDPHE Stipulation and Order," as defined and with background provided in the Motion Appointing Receiver.

32. Pursuant to C.R.C.P. 66(d)(3), the Receiver shall provide written notice of this action and entry of this Order to any persons in possession of Receivership Property or otherwise affected by this Order, including all known Creditors of Dragul, GDARES and GDAREM, subsidiaries and any their respective Representatives.

33. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

34. Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects to the request for Court approval within ten (10) days after service by the Receiver or written notice of such request. Service of motions by facsimile and electronic transmission is acceptable.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and

directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

IT IS FURTHER ORDERED that this Order shall be effective immediately and will remain in effect until terminated or modified by further Order of this Court.

DATED this _____ day of August, 2018.

BY THE COURT:

MARTIN F. EGELHOFF
Denver District Court Judge

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: March 8, 2019 12:07 PM FILED IN: GDD74587334619C5 CASE NUMBER: 2020CR00255
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. GARY JULE DRAGUL, DOB 05/07/1962, Defendant.	▲ COURT USE ONLY ▲
PHILIP J. WEISER, Attorney General DANIEL A. PIETRAGALLO, 41794 * Senior Assistant Attorney General MICHAEL J. BELLIPANNI #24421 * Senior Assistant Attorney General 1300 Broadway, 9 th Floor Denver, CO 80203 (720) 508-6698; (720) 508-6699 *Counsel of Record	Case No.: 19CR610 Div.: 407
COLORADO STATE GRAND JURY INDICTMENT	

- COUNT ONE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S. (Class 3 Felony) {50053} {as to Plainfield}
- COUNT TWO: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Scott Rockefeller}
- COUNT THREE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Philip Vineyard}
- COUNT FOUR: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to William Detterer}
- COUNT FIVE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S. (Class 3 Felony) {50053} {as to Plaza Mall of Georgia North}

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p>	
<p>PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY JULE DRAGUL, DOB: 05/07/1962</p> <p>Defendant.</p>	
<p>PHILIP J. WEISER, Attorney General DANIEL A. PIETRAGALLO #41794 * Senior Assistant Attorney General MICHAEL J. BELLIPANNI #24421 * Senior Assistant Attorney General 1300 Broadway, 9th Floor Denver, CO 80203 (720) 508-6000 * Counsel Of Record</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No.: 2018CR001</p> <p>Ct. Rm. 259</p>
<p>COLORADO STATE GRAND JURY INDICTMENT</p>	

Of the 2018-2019 term of the City and County of Denver Court in the year 2019, the 2018-2019 Colorado State Grand Jurors, chosen, selected and sworn in the name and by the authority of the People of the State of Colorado, upon their oaths, present the following:

ESSENTIAL FACTS

Gary Jule Dragul (hereafter DRAGUL) is the president of and registered agent for GDA Real Estate Services, LLC, a Colorado company located in Arapahoe County, Colorado. At all times relevant herein, DRAGUL managed GDA Real Estate Services, LLC (hereafter referred to as GDA). GDA's primary business is to take investor money and derive profit from organizing and establishing limited liability companies (LLC's) that purchase and manage commercial shopping centers and other commercial real estate ventures. DRAGUL and GDA would offer investors membership interests in these LLC's, with the expectation that the investors would profit from the future stream of income, as well as the potential future appreciation of the property. Many of these investment opportunities resulted in significant losses to the investors.

Despite being considered securities, which required registration with the Securities Exchange Commission and the Colorado Division of Securities, DRAGUL failed to register any of the LLC's and was never licensed to sell securities.

As part of the investigation by the Colorado Division of Securities, DRAGUL and GDA provided copies of business records, including but not limited to: general ledgers, balance sheets, income statements, offering documents, purchase agreements, emails, and copies of promissory notes. Based on a review of the GDA general ledger and other GDA business documents, it appears that GDA accrued millions of dollars in unsecured debt related to promissory notes in 2008 and 2013. Despite carrying substantial amounts of unsecured debt and struggling to meet operating costs, DRAGUL and GDA failed to disclose this material fact when soliciting subsequent investments.

On or about June 16, 2016, in response to an administrative subpoena issued by the Colorado Division of Securities as part of their investigation, DRAGUL and GDA began producing documents related to GDA's business operations, including Plainfield 09A, LLC. It was on or after June 16, 2016 that the State became aware that DRAGUL was engaging in a course of business which acted as a fraud upon investors.

The LLC's established by DRAGUL and GDA constitute joint ventures, which are considered "securities" pursuant to § 11-51-201 (17) C.R.S. Accordingly, such investments are subject to the provisions of the Colorado Securities Act.

In soliciting the investment contracts, DRAGUL made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose that they would sell/assign over 100% of the total membership interests in Plainfield 09A, LLC and the Plainfield Commons Shopping Center.
- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.

- DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
- DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
- DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of membership interests.

The criminal charges alleged herein involve two specific LLC offerings, both commercial shopping center joint ventures.

Between 2009 and 2014, DRAGUL and GDA solicited and received investment funds in Plainfield 09A, LLC and the Plainfield Commons Shopping Center (hereafter PLAINFIELD), which is located at 2663 E. Main Street, Plainfield, Indiana 46168. DRAGUL and GDA engaged in a course of business that operated as a fraud upon investors, by failing to disclose that they would sell over 194% of the membership interest in PLAINFIELD.

Between 2008 and 2016, DRAGUL and GDA solicited and received investor funds related to Plaza Mall North 08A Junior, LLC; a commercial shopping center located at 3410 & 3420 Buford Drive, Buford, GA 30519, and commonly known as Plaza Mall of Georgia North (hereafter PGN). DRAGUL and GDA engaged in a course of business that operated as a fraud upon investors, by failing to disclose the sale of the underlying PGN property to investors and failing to repay investor principal or appreciation, despite selling the property for a profit of \$6 million. DRAGUL and GDA also failed to disclose that they would pay themselves and business associates substantial commissions related to the sale of PGN.

In order to solicit investments in Plainfield and PGN, DRAGUL used an unregistered promoter from North Carolina named Marlin Hershey to recruit investors. He represented that DRAGUL and GDA were very successful and that DRAGUL was worth millions of dollars. Hershey was paid a commission for finding investors for GDA joint ventures. Hershey recruited a number of investors from Pennsylvania, North Carolina, Florida, and Texas. DRAGUL and GDA failed to repay many out-of-state investors that were recruited by Marlin Hershey.

Additionally, DRAGUL and GDA engaged in a course of business that involved comingling funds from numerous LLC accounts in order to make payments related to GDA's operating costs. Specifically, a review of the general ledger, balance sheets, bank account statements, and emails indicates that DRAGUL was transferring money from various LLC's and listing the debt as notes payable to those entities in the GDA general ledger. This appears to be a regular business practice.

DRAGUL also misappropriated investor funds for personal use by diverting substantial amounts of money to personal accounts.

DRAGUL and GDA continued the acts, practices and course of business designed to defraud investors through, and during 2017-2018. After obtaining investor funds, DRAGUL and GDA continued to solicit, accept, and hold investor funds, knowing that they could not generate the promised returns. DRAGUL used investor funds to pay personal expenses and continued to make material misstatements and omissions to the investors after their initial investments. DRAGUL thereby induced investors to maintain their investments with him, and to make subsequent investments. These resulting business practices operated as a fraud or deceit upon GDA's investors.

COUNT ONE

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to Plainfield}

On or about and between March 9, 2009 and January 1, 2014, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including Reba Buckwalter, MSHR, Inc., Scott Rockefeller, Jeffrey Tennis, Raymond Nutt, Calvin Ewell, David Hoe, Lori Hoe, Craig Naylor, David and Darcea Haar, HBT Partners, Benzmiller Family Trust (Kenneth Benzmiller), Eric Aafedt, Craig Evans, Laura Evans, James and Barbara McMahon, Consolidated GC of Texas (Naresh Daswani), Dennis Anderson, Steven Miller, Bret Chapman, Gideon and Rhonda Lapp, MSHR, Inc., Eugene Risser, Gerald Deardorff, Philip Vineyard, Sarah Vineyard Irrevocable Trust, John Heffley, William Detterer, Thomas McCaffrey, Martin Rosenbaum, and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count One are as follows:

1. On or about and between March 1, 2009 and January 1, 2014, DRAGUL and GDA solicited and received investor funds related to Plainfield 09A, LLC and the Plainfield Commons Shopping Center (PLAINFIELD), located at 2663 E. Main Street, Plainfield, Indiana 46168.
2. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.

3. In total, DRAGUL and GDA solicited and received approximately thirty separate investments in PLAINFIELD, totaling over \$2.5 million. That amount includes new cash investments of over \$1.5 million.
4. Each investment was evidenced by a Membership Purchase Agreement, which established that the investor was buying a membership interest in the LLC and a corresponding “beneficial interest in and to the Property”. In most cases, the percentage of membership interest and interest in the property were identical.
5. GDA provided investors a short “executive summary”, which indicated that the property would be purchased for \$5,057,000.00.
6. In fact, GDA purchased PLAINFIELD on July 10, 2009, for \$4,653,167.25, approximately \$400,000 less than previously disclosed to investors in the executive summary.
7. By November 2012, DRAGUL and GDA had already sold or assigned 99.24% of the membership interests in PLAINFIELD (and interest in and to the Property) to approximately twenty investors.
8. DRAGUL and GDA would go on to sell/assign additional membership interests in PLAINFIELD to approximately ten other investors. In so doing, DRAGUL and GDA failed to disclose that they had already sold membership interests in PLAINFIELD totaling over 100%.
9. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose that they would sell/assign over 100% of the total membership interests in PLAINFIELD.
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL’s personal bank account or other unrelated GDA investment accounts.
 - DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
 - DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

10. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on or about and between March 9, 2009 and January 1, 2014, include one or more of the following:

- a) Reba Buckwalter, a resident of Lancaster, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about March 9, 2009, in exchange for a 3.766% interest in and to the property.
- b) MSHR, Inc., a company based in Huntersville, North Carolina, invested approximately twenty thousand dollars (\$20,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 1.507% interest in and to the property.
- c) Scott Rockefeller, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars (\$30,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 2.26% interest in and to the property.
- d) Jeffrey Tennis, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 7.533% interest in and to the property.
- e) Raymond Nutt, a resident of Littleton, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about April 17, 2009, in exchange for a 3.766% interest in and to the property.
- f) Calvin Ewell, a resident of East Earl, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about April 23, 2009, in exchange for a 3.766% interest in and to the property.
- g) David Hoe, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars (\$30,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 2.185% interest in and to the property.
- h) Lori Hoe, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars (\$20,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 1.507% interest in and to the property.
- k) Craig Naylor, a resident of Chadds Ford, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 7.533% interest in and to the property.
- l) David and Darcea Haar, residents of Centennial, Colorado, invested approximately twenty thousand dollars (\$20,000.00) in Plainfield 09A, LLC on or about June 11, 2009, in exchange for a 1.507% interest in and to the property.

- m) HBT Partners, a company based in Lancaster, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about June 11, 2009, in exchange for a 7.533% interest in and to the property.
- n) The Benzmiller Family Trust (Kenneth Benzmiller), a company based in Charlotte, North Carolina, invested approximately two hundred thousand dollars (\$200,000.00) in Plainfield 09B, LLC on or about July 9, 2009, in exchange for a 15.07% interest in and to the property.
- o) Eric Aafedt, a resident of Evergreen, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about November 1, 2009, in exchange for a 3.766% interest in and to the property.
- p) Craig Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about November 15, 2009, in exchange for a 3.766% interest in and to the property.
- q) Laura Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about November 15, 2009, in exchange for a 3.766% interest in and to the property.
- r) James and Barbara McMahon, residents of Englewood, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about February 16, 2010, in exchange for a 3.766% interest in and to the property.
- s) Consolidated GC of Texas (Naresh Daswani), a company based in Houston, Texas, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about April 1, 2012, in exchange for an 8.648% interest in and to the property.
- t) Dennis Anderson, a resident of Wilmington, North Carolina, invested approximately sixty-eight thousand seven hundred and fifty dollars (\$68,750.00) in Plainfield 09A, LLC on or about July 10, 2012, in exchange for a 5.288% interest in and to the property.
- u) Steven Miller, a resident of Mooresville, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about July 10, 2012, in exchange for a 7.692% interest in and to the property.
- v) Bret Chapman, a resident of Concord, NC, invested approximately sixty thousand dollars (\$60,000.00) in Plainfield 09A, LLC on or about November 5, 2012, in exchange for a 4.615% interest in and to the property.

- w) Gideon and Rhonda Lapp, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.
- x) MSHR, Inc., a company based in Huntersville, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.
- y) Eugene Risser, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.
- z) Gerald Deardorff, a resident of York, Pennsylvania, invested approximately one hundred and fifty thousand dollars (\$150,000.00) in Plainfield 09A, LLC on or about July 1, 2013, in exchange for an 11.299% interest in and to the property.
- aa) Philip Vineyard, a resident of Charleston, South Carolina, invested approximately three hundred thousand dollars (\$300,000.00) in Plainfield 09A, LLC on or about July 11, 2013, in exchange for a 22.599% interest in and to the property.
- bb) The Sarah Vineyard Irrevocable Trust, based in Charlotte, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about July 12, 2013, in exchange for a 7.533% interest in and to the property.
- cc) John Heffley, a resident of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about August 28, 2013, in exchange for a 7.553% interest in and to the property.
- dd) William Detterer, a resident of Wyomissing, Pennsylvania, invested approximately two hundred thousand dollars (\$200,000.00) in Plainfield 09A, LLC on or about August 30, 2013, in exchange for a 15.066% interest in and to the property.
- ee) Thomas McCaffrey, a resident of Parker, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plainfield 09A, LLC on or about October 1, 2013, in exchange for a 3.766% interest in and to the property.
- ff) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC on or about January 1, 2014, in exchange for a 4.736% interest in and to the property.

11. In total, DRAGUL and GDA sold over 194% of the interest in PLAINFIELD. Of the \$1.5 million in new money raised for PLAINFIELD, \$645,150 was directed to DRAGUL personally.

12. On or about March 12, 2015, DRAGUL and GDA sold PLAINFIELD for \$5,563,500.00, a profit of approximately \$1 million.
13. None of the investors in PLAINFIELD were repaid their principal investment. Investors were forced to roll their investments from PLAINFIELD into another LLC, known as Clearwater.
14. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and omissions of material fact as described herein, operated as a fraud upon investors.

COUNT TWO:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Scott Rockefeller}

On or about and between June 26, 2013 and August 2, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to MSHR, Inc. and/or Scott Rockefeller, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Two are as follows:

15. On or about June 26, 2013, after selling/assigning over 100% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited MSHR, Inc. and/or Scott Rockefeller to invest approximately one hundred thousand dollars (\$100,000.00) in Plainfield 09A, LLC., in exchange for a 7.553% interest in and to the property.
16. On or about July 29, 2013, DRAGUL and GDA sent a letter to MSHR, Inc. – Attn: Scott Rockefeller. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous \$50,000 investment in Crosspointe 08A, LLC and a \$25,000 investment in CP Loan, in addition to a cash investment of \$25,000.
17. That letter failed to advise MSHR and/or Scott Rockefeller that DRAGUL and GDA already sold/assigned over 100% of the membership interests in the property.

18. On or about July 30, 2013, MSHR sent check #100 in the amount of \$25,000 to GDA for the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was deposited into GDA's bank account on or about August 2, 2013.
19. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
- DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
 - DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

COUNT THREE

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Philip Vineyard}

On or about and between July 11, 2013 and August 16, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to Philip Vineyard., directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Three are as follows:

20. On or about July 11, 2013, after selling/assigning over 130% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited Philip Vineyard, to invest approximately three hundred thousand dollars (\$300,000.00) in Plainfield 09A, LLC., in exchange for a 22.599% interest in and to the property.

21. On or about July 11, 2013, DRAGUL and GDA sent a letter to Philip Vineyard. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous \$150,000 investment in Syracuse Property 06, LLC, in addition to a cash investment of \$150,000.
22. That letter failed to advise Philip Vineyard that DRAGUL and GDA already sold/assigned well over 100% of the membership interests in the property.
23. On or about July 15, 2013, Philip Vineyard sent check #601 in the amount of \$100,000 to GDA as part of the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited on or about July 15, 2013.
24. On or about August 15, 2013, Philip Vineyard sent check #619 in the amount of \$50,000 to GDA as part of the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited into his personal bank account on or about August 16, 2013.
25. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.
 - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
 - DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
 - DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
 - DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

COUNT FOUR

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to William Detterer}

On or about and between August 30, 2013 and September 12, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to William Detterer, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Four are as follows:

26. On or about August 30, 2013, after selling/assigning over 170% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited William Detterer, to invest approximately two hundred thousand dollars (\$200,000.00) in Plainfield 09A, LLC., in exchange for a 15.066% interest in and to the property.
27. On or about August 30, 2013, DRAGUL and GDA sent a letter to William Detterer. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous \$100,000 investment in Crosspointe 08A, LLC and a \$36,567 investment in CP Loan, in addition to a cash investment of \$63,433.
28. That letter failed to advise William Detterer that DRAGUL and GDA already sold/assigned well over 100% of the membership interests in the property.
29. On or about September 10, 2013, William Detterer sent check #203 in the amount of \$63,433 to GDA for the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited into his personal bank account on or about September 12, 2013.
30. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:
 - DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
 - DRAGUL and GDA failed to disclose the actual risk associated with investments.

- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
- DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
- DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

COUNT FIVE:

(Securities Fraud – F3)

C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to Plaza Mall of Georgia North}

On or about and between December 31, 2008 and April 1, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including Barbara Burroughs, W. Slater Burroughs, Calvin Ewell, Elizabeth Maurer, OM&K, LLC, Marshall Parker, Ray Webb Parker, William Parker, Jr., Scott Rockefeller, Keith Snyder, Jeffrey Tennis, Kristina Kapur-Mauleon and Luis Mauleon, Dublin Realty Company, David and Barbara Landis, Gideon and Rhonda Lapp, Eric Aafedt, Harper Beall, Craig Evans, Laura Evans, Marvin Weaver, Douglas and Michelle Shuff, Meeting Street Properties, LLC, Coleen Hurst, Scott Chatham, Leftin Investment Company (Soloman Leftin), Raymond Nutt, Sarah Vineyard Irrevocable Trust, Philip Vineyard, James and Susan Hess, Gerald and Miriam Weaver, Eagle Group V (Eric Blow), Daniel Brittain, Kurtz Hersch, Martin Rosenbaum, Jerry and Susan Horst, Horst Irrevocable Trust, James McMahon, Howard Anderson, Rex and Kimberly Stump, Eisen Steele Family Trust, LLC, 3855 Forest, LLC (David Kaufmann), Stoltzfus Properties, LLC (Al Stoltzfus), Aaron Steinberg, Leora Rosenbaum, Martin, Rosenbaum, Edward Delava – Trustee of the Fox 2002 Irrevocable Trust, Melissa Rosenbaum, Alan C. Fox Irrevocable Trust, and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Five are as follows:

31. On or about and between December 31, 2008 and April 1, 2016, DRAGUL and GDA solicited and received investor funds related to Plaza Mall North 08A Junior, LLC; a commercial shopping center located at 3410 & 3420 Buford Drive, Buford, GA 30519, and commonly known as Plaza Mall of Georgia North (hereafter PGN).
32. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.
33. In total, DRAGUL and GDA solicited and received approximately forty-seven separate investments in PGN, totaling over \$9 million. That amount includes new cash investments of over \$3 million.
34. Each investment was evidenced by a Membership Purchase Agreement, which established that the investor was buying a membership interest in the LLC.
35. GDA provided investors with a short “executive summary”, which indicated that the property would be purchased for \$28,470,000.00.
36. In fact, GDA purchased PGN on December 24, 2008 for \$25,920,000.00, approximately \$2.55 million less than previously disclosed to investors in the executive summary.
37. As part of this closing, GDA paid themselves a \$200,000 consulting fee, paid SSC a \$75,000 consulting fee, and paid ACF a \$500,000 consulting fee. None of these fees were disclosed to investors prior to the closing.
38. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on or about and between December 31, 2008 and April 1, 2016, include one or more of the following:
 - a) Barbara Burroughs, a resident of Charlotte, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
 - b) W. Slater Burroughs, a resident of Cornelius, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
 - c) Calvin Ewell, a resident of East Earl, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
 - d) Elizabeth Maurer, a resident of Landisville, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

- e) OM&K, LLC, a company based in Wadmalaw Island, South Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- f) Marshall Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- g) Ray Webb Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- h) William Parker, Jr., a resident of Shelby, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- k) Scott Rockefeller, a resident of Huntersville, North Carolina, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- l) Keith Snyder, a resident of Landisville, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- m) Jeffrey Tennis, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.
- n) Kristina Kapur-Mauleon and Luis Mauleon, residents of Ithica, New York, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about January 15, 2009.
- o) Dublin Realty Company, Inc., a company based in Charlotte, North Carolina, invested approximately five hundred and seventy-thousand dollars (\$570,000.00) in Plaza Mall North 08A Junior, LLC on or about January 20, 2009.
- p) David and Barbara Landis, residents of Lititz, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about January 30, 2009.
- q) Gideon & Rhonda Lapp, a resident of Lancaster, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about January 30, 2009.

- r) Eric Aafedt, a resident of Evergreen, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- s) Harper Beall, a resident of Lenoir, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- t) Craig Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- u) Laura Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- v) Marvin Weaver, a resident of Blue Ball, PA, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- w) Douglas & Michelle Shuff, residents of Lebanon, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 5, 2009.
- x) Meeting Street Properties, LLC (John Beall), a company based in Blowing Rock, North Carolina, invested approximately one hundred sixty-three thousand dollars (\$163,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.
- y) Coleen Hurst, a resident of Lancaster, Pennsylvania, invested approximately three hundred thousand dollars (\$300,000.00) in Plaza Mall North 08A Junior, LLC on or about April 10, 2012.
- z) Scott Chatham, a resident of Conover, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 13, 2013.
- aa) Leftin Investment Company (Solomon Leftin), a company based in Denver, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 1, 2013.
- bb) Raymond Nutt, a resident of Littleton, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about September 1, 2013.
- cc) The Sarah Vineyard Irrevocable Trust, based in Charlotte, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 5, 2013.

- dd) Philip Vineyard, a resident of Charleston, South Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 5, 2013.
- ee) James and Susan Hess, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 6, 2013.
- gg) Gerald and Miriam Weaver, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 9, 2013.
- hh) Eagle Group V (Eric Blow), a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 11, 2013.
- ii) Daniel Brittain, a resident of Hickory, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 13, 2013.
- jj) Kurtz Hersch, a resident of Monee, Illinois, invested approximately one hundred and fifty thousand dollars (\$150,000.00) in Plaza Mall North 08A Junior, LLC on or about September 13, 2013.
- kk) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 16, 2013.
- ll) Jerry and Susan Horst, residents of Lititz, Pennsylvania, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about September 30, 2013.
- mm) The Horst Irrevocable Trust, a company based in Lititz, Pennsylvania, invested approximately one hundred and fifty thousand dollars (\$150,000.00) in Plaza Mall North 08A Junior, LLC on or about September 30, 2013.
- nn) James McMahon, a resident of Aurora, Colorado, invested approximately fifty thousand dollars (\$50,000.00) in Plaza Mall North 08A Junior, LLC on or about October 1, 2013.
- oo) Howard Anderson, a resident of Taylorsville, North Carolina, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about October 7, 2013.

- pp) Rex and Kimberly Stump, residents of Mooresville, North Carolina, invested approximately two hundred thousand dollars (\$200,000.00) in Plaza Mall North 08A Junior, LLC on or about November 11, 2013.
- qq) The Eisen Steele Family Trust, LLC, a company based in Englewood, Colorado, invested approximately one hundred and thirty-two thousand dollars (\$132,000.00) in Plaza Mall North 08A Junior, LLC on or about December 1, 2013.
- rr) 3855 Forest, LLC (Donald Kaufmann), a company based in Englewood, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 1, 2014.
- ss) Stoltzfus Properties, LLC (Al Stoltzfus), a company based in Washington, Utah, invested approximately one hundred and twenty-five thousand dollars (\$125,000.00) in Plaza Mall North 08A Junior, LLC on or about July 1, 2014.
- tt) Aaron Steinberg, a resident of Denver, Colorado, invested approximately one hundred and twenty-five thousand dollars (\$125,000.00) in Plaza Mall North 08A Junior, LLC on or about May 5, 2015.
- uu) Leora Rosenbaum, a resident of Denver, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 15, 2015.
- vv) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately three hundred thousand dollars (\$300,000.00) in Plaza Mall North 08A Junior, LLC on or about July 1, 2015.
- ww) Edward Delava – Trustee of the Fox 2002 Irrevocable Trust, based in California, invested approximately three hundred thousand dollars (\$300,000.00) in Plaza Mall North 08A Junior, LLC on or about October 27, 2015.
- xx) Melissa Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars (\$100,000.00) in Plaza Mall North 08A Junior, LLC on or about April 1, 2016.
- yy) The Alan C. Fox Irrevocable Trust, invested approximately three million, seven hundred and ten thousand, seven hundred and sixty-five dollars (\$3,710,765.00) in Plaza Mall North 08A Junior, LLC.
39. On or about April 1, 2016, DRAGUL and GDA brokered an agreement to sell Alan Fox's shares of PGN to an institutional investor from Israel, known as Hagshama Funds (hereafter HAGSHAMA). HAGSHAMA invested approximately \$4.6 million for the purchase of Fox's interest in PGN.

40. As part of the fees paid related to that transaction, GDA also received an “Acquisition Fee” of \$100,000 and HAGSHAMA received an “Equity Arrangement Fee” of \$231,579.
41. GDA also received a “Post Closing Note Loan” from HAGSHAMA in the amount of \$300,000, upon transfer of the shares.
42. On or about April 27, 2017, DRAGUL and GDA sold PGN for \$32,000,000.00; a profit of over \$6 million. DRAGUL and GDA failed to disclose to investors that the property had sold.
43. As part of that closing, GDA was paid a 2% commission totaling \$560,000 and The Shopping Center Group was paid a 1% commission totaling \$320,000. None of the \$880,000 in commissions or fees was disclosed to investors.
44. On or about April 27, 2017, DRAGUL and GDA received a wire transfer for seller proceeds from the sale of PGN, totaling over \$9.8 million.
45. On or about and between May 2, 2017 and May 5, 2017, HAGSHAMA controlled entities received wire transfers in the amount of \$5,668,100; a profit of over \$1 million.
46. Other than HAGSHAMA and two other investors (Leftin and Hurst), none of the remaining forty-four investors in PGN were told of the sale or repaid their principal investment, despite the \$6 million profit.
47. DRAGUL and GDA engaged in a course of business which acted as a fraud upon investors by failing to disclose the sale/profits from PGN, by continuing to send monthly distributions to investors, and by failing to repay principal investments or appreciation on the sale. This led investors to believe that they still owned PGN for over one year after the sale.
48. DRAGUL and GDA also deliberately provided materially false information to investors about the status of PGN after the sale.
49. By way of example, on or about October 17, 2017, DRAGUL spoke with investor Gerald Horst and advised him that he lost money in his PGN investment and that the sale of the property was not yet complete. Horst invested approximately \$200,000 in PGN in September of 2013. His contemporaneous notes about the conversation on or about October 17, 2017, are as follows:

I just got off the phone with Gary Dragul, he says Georgia Plaza North will be sold and settled in about 30 days and expects to issue to us a check for 75-82% of our initial investment. When I asked how it could be so low in a time of high real estate prices he said 45% is a bog [sic] box tenant which are very difficult to find....

50. Investor Philip Vineyard was also directly misled by DRAGUL. In December of 2017, DRAGUL spoke with Vineyard and told him that PGN was doing well. DRAGUL failed to disclose that PGN had sold approximately eight months earlier.
51. On or about May 18, 2018, over one year after the closing on the sale of PGN, DRAGUL and GDA sent an email to investors finally disclosing the sale and indicating that the joint venture was not as successful as they had hoped, because of failed negotiations with a big box tenant.
52. In that email, DRAGUL and GDA failed to disclose that they received over \$9.8 million in proceeds from the sale of PGN, over one earlier.
53. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and omissions of material fact as described herein, as well as the failure to repay investor principal or appreciation, operated as a fraud upon investors.

PHILIP J. WEISER,
ATTORNEY GENERAL


By:



Michael Bellipanni, Reg. No. 24421
Senior Assistant Attorney General
Criminal Justice Section

The 2018 - 2019 State Grand Jury presents the within Indictment, and the same is hereby ORDERED FILED this 28th day of February, 2019.

Pursuant to C.R.S. 13-73-107, the Court hereby designates the **County of Arapahoe**, Colorado, as the county of venue for the purposes of trial.



MICHAEL A. MARTINEZ
Chief Judge, Second Judicial District

DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO
Denver District Court
1437 Bannock St.
Denver, CO 80202

DATE FILED: June 8, 2022 11:07 PM
FILING ID: 8737B049CD5C5
CASE NUMBER: 2020CV30255

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; 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.

▲ COURT USE ONLY ▲

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Case No: 2020CV30255

Division/Courtroom: 414

FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PARTIES	3
III.	JURISDICTION AND VENUE.....	7
IV.	GENERAL ALLEGATIONS.....	8
	A. General Factual Background – Key Players in the Fraudulent Scheme.....	8
	B. Dragul’s Ponzi Scheme.....	11
	C. The Financial Operations of GDA	14
	D. Solicitation of Investor Funds – Private Offerings	22
	i. The Market at Southpark	28
	ii. Plaza Mall of Georgia North	42
	iii. Fort Collins WF 02, LLC	48
	E. Real Estate Transfers Between Dragul and Fox – Prospect Square.....	61
	F. Dragul, Markusch, the Kahn and Fox Defendants’ Conduct Designed to Thwart the Receiver’s Efforts and Conceal or Impermissibly Transfer Receivership Estate Assets	71
	G. Payment of Unauthorized Commissions	80
	i. The Dragul and Fox Commissions.....	82
	ii. The Markusch Commissions	83
	iii. The Hershey Commissions	84
V.	FIRST CLAIM FOR RELIEF: Violations of the Colorado Securities Act, Colo. Rev. Stat. §§ 11-51-501 and 11-51-604(1), (2)(A), (3), and (5).....	85
	A. Securities Registration Violations, C.R.S. §§ 11-51-604(1) and 11-51-301 (Against Dragul and the Fox Defendants)	85

B.	Licensing and Notice Filing Violations, C.R.S. §§ 11-51-604(2)(a) and 11-51-401 (Against Dragul and the Fox and Hershey Defendants)	86
C.	Securities Fraud in Violation of C.R.S. §§ 11-51-604(3) - (4) and 11-51-501(1)(a)-(c) (Against Dragul and the Fox Defendants).	88
D.	Control Person Liability, C.R.S. § 11-51-604(5)(a) and (b) (Against Dragul and Fox).....	98
E.	Substantial Assistance Claims, C.R.S. § 11-51-604(5)(c) (Against the Kahn Defendants, the Fox Defendants, the Hershey Defendants, Markusch).....	100
VI.	SECOND CLAIM FOR RELIEF: Negligence (Against Dragul and the Fox and Hershey Defendants)	103
VII.	THIRD CLAIM FOR RELIEF: Negligent Misrepresentation (Against Dragul and the Fox and Hershey Defendants)	104
VIII.	FOURTH CLAIM FOR RELIEF: Civil Theft, Colo. Rev. Stat. § 18-4-401 (Against all Defendants)	106
IX.	FIFTH CLAIM FOR RELIEF: Violations of the Colorado Organized Crime Control Act (“COCCA”) Colo. Rev. Stat. § 18-17-101, et seq. (Against Dragul, the Fox Defendants, and the Hershey Defendants).....	107
X.	SIXTH CLAIM FOR RELIEF: Aiding and Abetting Violations of COCCA, Colo. Rev. Stat. § 18-17-101 et seq. (Against Markusch, and the Kahn, Fox, and Hershey Defendants).....	114
XI.	SEVENTH CLAIM FOR RELIEF: Breach of Fiduciary Duty (Against Dragul).....	118
XII.	EIGHTH CLAIM FOR RELIEF: Aiding and Abetting Dragul’s Breach of Fiduciary Duties (Against the Kahn Defendants)	120
XIII.	NINTH CLAIM FOR RELIEF: Negligence (Against the Kahn Defendants)	121
XIV.	TENTH Claim for Relief: Breach of Fiduciary Duty (Against the Kahn Defendants)	122

XV. ELEVENTH Claim for Relief: Fraudulent Transfer, Colo. Rev. Stat. §
38-8-105(1)(a) (Against All Defendants) 125

XVI. TWELFTH CLAIM FOR RELIEF: Unjust Enrichment (Against All
Defendants) 126

PRAYER FOR RELIEF 126

Plaintiff, Harvey Sender, solely in his capacity as Receiver for the “Estate” described below (the “**Receiver**”), brings the following First Amended Complaint (the “**Amended Complaint**”):

I. INTRODUCTION

1. This case arises from a fraudulent commercial real estate scheme orchestrated by Gary Dragul in concert with Marlin Hershey, Alan Fox, Susan Markusch, and Benjamin Kahn, in which investors lost millions of dollars. Dragul, in concert with the other defendants solicited more than \$52 million from hundreds of investors purportedly to purchase ownership interests in numerous single purpose entities (“**SPEs**”).

2. Dragul and the other Defendants lured investors into investing millions under false and misleading pretenses. Adopting strategies he learned from his mentor and former business partner, Alan Fox, Dragul stole millions from investors who, in some instances, invested their entire savings to support his extravagant lifestyle.

3. Dragul, who has been indicted on fourteen counts of securities fraud, is the defendant in a pending civil enforcement action brought by the Securities Commissioner for the State of Colorado, and he consented to the appointment of the Receiver in that action.

4. Dragul was able to carry on this fraudulent scheme for more than 20 years as a direct result of the participation, assistance, and efforts of the other

Defendants in this action. Each defendant played a distinct and important role in carrying out Dragul's scheme.

5. Hershey – who is currently embroiled in civil litigation brought against him, his partner, and their various entities, by the Securities Exchange Commission (the “SEC”), for violating federal securities laws – solicited individual investors for Dragul by distributing solicitation materials containing material misrepresentations, and received substantial illegal and undisclosed commissions from each investment made in Dragul's fraudulent scheme originated by Hershey .

6. Alan Fox, Dragul's mentor and former business partner, has been sued by numerous investors in California for engaging in the same type of fraudulent conduct for which Dragul has been indicted. Fox prepared and distributed to Dragul's defrauded investors materially false and misleading solicitation materials for investments in the ACF Property Management, Inc. (“ACF”) portfolio to solicit investments therein, in furtherance of Dragul's fraudulent scheme. Like Hershey, Fox and his company, ACF, received undisclosed and illegal commissions. Fox and Dragul also transferred investor properties between the two of them and improperly inflated transfer prices to obtain undisclosed and fraudulent commissions.

7. Markusch, Dragul's loyal and most trusted employee, effected the illegal and undisclosed comingling of millions of investor dollars. In addition to the handsome salary Dragul paid her, Markusch profited from undisclosed and illegal

real estate commissions through two of her wholly-owned companies, Olson Real Estate Services, LLC (“Olson”) and Juniper Consulting Group, LLC (“Juniper”).

8. Finally, Benjamin Kahn, Dragul’s long-standing ally, co-conspirator and counsel for Dragul, GDA and the Fox Defendants, participated in and profited from Dragul’s fraudulent scheme in his representation and counsel of Dragul, GDA the related SPEs, and Fox, in furtherance of the fraudulent scheme.

9. Demonstrating their unwavering loyalty to Dragul, like Dragul, Fox, Kahn, and Markusch also withheld documents and information from the Receiver and his team, while continuing to help Dragul conceal and purloin Estate assets, transferring ownership and management rights of Estate assets, and interfering with the Receiver’s efforts to discover and liquidate Estate assets.

II. PARTIES

10. On August 30, 2018, the Court in *Chan v. Dragul, et al.* Case No. 2018CV33011, District Court, Denver, Colorado (the “**Receivership Court**”) entered a Stipulated Order Appointing Receiver (the “**Receivership Order**”) appointing Harvey Sender of Sender & Smiley, LLC, as receiver for Gary Dragul (“**Dragul**”), GDA Real Estate Services, LLC (“**GDA RES**”), GDA Real Estate Management, LLC (“**GDA REM**”), (GDA RES and GDA REM are collectively referred to as, “**GDA**”), and a number of related entities and single purpose entities (the “**GDA Entities**”), and their assets, interests, and management rights in related affiliated and subsidiary

businesses (the “**Receivership Estate**” or the “**Estate**”). *See* Receivership Order, previously attached to original Complaint as **Exhibit 1 (“Compl. Ex. 1”)**.¹

11. The Receivership Order grants the Receiver the authority to recover possession of Receivership Property from any persons who may wrongfully possess it and to prosecute claims premised on fraudulent transfer and similar theories. **Compl. Ex. 1**, at ¶ 13(o).

12. The Receivership Order also grants the Receiver the authority to prosecute claims and causes of action against third parties held by creditors of Dragul and the GDA Entitles, and any subsidiary entities for the benefit of creditors of the Estate, “in order to assure the equal treatment of all similarly situated creditors.” **Compl. Ex. 1**, at ¶ 13(s).

13. The Receiver’s principal place of business is at 600 17th Street, Suite 2800, Denver, CO 80202.

14. Defendant Gary Dragul is an individual who is a resident of the State of Colorado. His present address is unknown.

¹ **Exhibits 1 through 20** that were previously submitted with and attached to original Complaint filed on January 21, 2020 are not being re-submitted herewith with the exception of Exhibit 6 (Fox Defendants’ Commission Summary), which is amended and substituted with this filing. References in this Amended Complaint to “Compl. Ex.” shall mean and refer to those Exhibits 1 through 20 submitted with the Original Complaint.

15. Defendant Benjamin Kahn (“**Kahn**”) is an individual who resides at 229 ½ F Street, Salida, Colorado 81201. At all relevant times, Kahn was general counsel for GDA REM and GDA RES, and the GDA Entities.

16. Defendant the Conundrum Group, LLP (“**CG**”) is a Colorado Limited Liability Partnership with its principal place of business 229 1/2 F Street, Salida, CO 81201. Its registered agent is Megan Rae Kahn, at the same address. (Kahn and CG are referred to as the “**Kahn Defendants**”). At all relevant times, Kahn was an agent of Defendant CG.

17. Defendant Susan Markusch, (“**Markusch**”) resides at 6321 South Geneva Circle, Englewood, CO 80111. At all relevant times, Markusch was the controller and chief financial officer of GDA RES, GDA REM, and the GDA Entities.

18. Defendant Olson Real Estate Services, LLC (“**Olson RES**”) is a Colorado limited liability company with its principal place of business located at 6321 South Geneva Circle, Englewood, CO 80111. Olson RES’s registered agent is Andrew Solomon, 10794 E Berry Ave., Englewood, Colorado 80111.

19. Defendant Juniper Consulting Services, LLC (“**Juniper**”) was a Colorado limited liability company with its principal place of business located at 11425 Cimmaron Drive, Englewood, Colorado 80111. Juniper filed articles of dissolution with the Colorado Secretary of State on November 24, 2019. (Markusch, Olson RES and Juniper are referred to as the “**Markusch Defendants**”).

20. Defendant Alan C. Fox (“**Fox**”) is an individual who resides at 2081 Jeremy Lane, Escondido, California 92027-1159.

21. Defendant ACF Property Management, Inc. (“**ACF**”) is a California corporation with its principal place of business located at 12411 Ventura Boulevard, Studio City, California, 91604. At all relevant times, ACF was registered to do business in the State of Colorado. ACF’s registered agent is Moye White, LLP: Registered Agent Department, at 1400 16th Street, 6th Floor, Denver, Colorado, 80202. (Fox and ACF are referred to as the “**Fox Defendants**”).

22. At all relevant times, Fox owned and controlled ACF, the entity through which he funneled commissions and other payments from Dragul and the GDA Entities.

23. At all relevant times herein, ACF utilized and shared the employees of GDA RES and GDA REM, including Defendant Markusch, to carry on the business of ACF without declaring such employees for taxation or other employment regulatory purposes.

24. Neither Fox nor ACF were licensed or registered brokers with the Financial Industry Regulatory Authority (“**FINRA**”), the State of Colorado or the SEC; nor were they affiliated or associated with a FINRA or SEC licensed or registered broker-dealer for any time period relevant to the allegations in this Complaint.

25. Defendant Marlin Hershey (“**Hershey**”) is an individual who resides at 15514 Fisherman’s Rest Ct., Cornelius, North Carolina 28031-7646.

26. Defendant Performance Holdings, Inc. (“**PHI**”) is a Florida corporation with its principal place of business in Huntersville, North Carolina (Hershey and PHI are referred to as the “**Hershey Defendants**”).

27. At all relevant times, Hershey owned and controlled PHI through which he funneled commissions from Dragul and the GDA Entities.

28. Neither Hershey nor PHI were licensed or registered brokers with FINRA, the State of Colorado or the SEC; nor were they affiliated or associated with a FINRA or SEC licensed broker-dealer for any time period relevant to the allegations in this Complaint.

29. Dragul, Kahn, CG, Markusch, Olson RES, Fox, ACF, Hershey, and PHI are collectively referred to as the “**Defendants.**”

30. Upon information and belief, John and Jane Does 1 – 10 are individuals whose names and addresses are presently unknown.

31. Upon information and belief, XYZ Corporations 1 – 10 are corporations and other legal entities, the names and addresses of which are presently unknown.

III. JURISDICTION AND VENUE

32. Jurisdiction is proper under COLO. REV. STAT. § 13-1-124 and the Colorado Constitution, Article VI, Section 9, because, since 2007, Defendants have

had ongoing and systematic contacts with Dragul and the GDA Entities in Colorado in furtherance of a scheme to defraud innocent investors.

33. Venue is proper under C.R.C.P. 98(c), because the Receiver's principal place of business is in the City and County of Denver and service can be made on one or more of the Defendants in the City and County of Denver.

IV. GENERAL ALLEGATIONS

A. General Factual Background – Key Players in the Fraudulent Scheme

34. This action arises from a multi-million-dollar fraud and Ponzi scheme perpetrated by Dragul in concert with the other Defendants in violation of the Colorado Securities Act (the “**Act**”).

35. From 1995 through 2018, Dragul as the President of GDA RES and GDA REM, operated a real estate investment business through the use of a variety of investment vehicles in which various persons and entities invested (the “**Sham Business**”).

36. Since approximately 1996, Dragul's mentor and joint venture business partner, Fox, has operated ACF, a similar real estate investment business whose offices are in Ventura, California.

37. Upon information and belief since GDA was formed until approximately August 2018, ACF used GDA's employees to conduct ACF's business including all aspects of ACF's acquisitions process, leasing, property management, tenant relations, marketing and sale of properties, roll-over investments, and other matters.

38. Upon information and belief, while employees of GDA worked for ACF as de facto employees, the Fox Defendants did not report or otherwise declare these individuals of ACF employees for tax or other purposes.

39. For more than 20 years, Markusch worked with Dragul as GDA's controller and CFO. Markusch's duties as controller and CFO entailed oversight and management of all accounting, bookkeeping, banking, financial reporting and recordkeeping, taxes and the like, as well as office manager of the GDA Entities.

40. As controller and CFO of the GDA Entities, Markusch was a signatory and authorized user of all GDA and SPE bank accounts, and thus had full control, authority, and access to funds therein.

41. The Hershey Defendants furthered Dragul's fraudulent scheme by identifying and soliciting investors for the Sham Business.

42. For his successful solicitation efforts, Hershey received a percentage of the total investment made by each investor as an undisclosed and illegal finder's fee or commission.

43. Hershey was directly involved in, and in some instances, drafted false and misleading communications Dragul sent to investors, as more specifically described herein.

44. The Colorado Securities Commissioner and the Colorado Attorney General began to investigate Dragul and the GDA Entities in 2014 after receiving complaints from investors.

45. On April 12, 2018, Dragul was indicted by a Colorado State Grand Jury on nine counts of securities fraud (the “**First Indictment**”). The First Indictment is attached as **Exhibit 21**.

46. On March 1, 2019, Gary Dragul was indicted by a Colorado State Grand Jury on an additional five counts of securities fraud (the “**Second Indictment**”). The Second Indictment is attached as **Exhibit 22**.

47. In or about March 2018, one month before Dragul’s First Indictment, Markusch began maintaining all accounting reconciliations for all GDA Entities in handwritten notes, as opposed to electronically, where it had previously been stored on the company’s servers as had been GDA’s practice before the indictments.

48. In or about April 2019, the Receiver executed a writ of assistance at Markusch’s home, where 11 boxes of Estate documents and records were discovered, including over 100 pages of handwritten reconciliations for accounts in Dragul’s and the GDA Entities’ names.

49. Upon information and belief, Markusch removed the 11 boxes of documents from GDA and stored them at her home to conceal them from the Receiver and the Commissioner.

50. Kahn has served as outside general counsel to the GDA Entities and the SPEs for numerous years, and drafted solicitation documents, operating agreements, and other legal documents for Dragul and the GDA Entities, and for the SPEs, and in that capacity gained knowledge of the Sham Businesses.

51. Since the Receiver's appointment, Kahn has conspired with Dragul and Markusch to conceal documents and assets from the Receiver, and to transfer management rights and ownership interests in entities subject to the Receivership.

52. Without disclosure to investors, Kahn was also paid legal fees from the escrow of certain properties for work unrelated to the specific SPEs from which the funds were paid.

B. Dragul's Ponzi Scheme

53. Dragul, in active concert with the other Defendants (collectively, the "**Non-Dragul Defendants**"), solicited investors to purchase membership interests in various limited liability companies/SPEs that were engaged in the business of acquiring and managing commercial real estate, primarily retail shopping malls.

54. According to the Complaint for Injunctive and Other Relief filed on behalf of the Commissioner, from January 2008 until December 2015, Dragul, through GDA, sold more than \$52 million worth of interests in 14 SPEs to approximately 175 investors (collectively referred to as, the "**GDA Entity Investors**"). **Compl. Ex. 2.**

55. The following is a list of the 14 SPEs included in the Commissioner's Complaint with the amount raised for each by Dragul from investors and the approximate date of the securities offerings:

Property	SPE Owner(s) of the Property	Bank Accounts Associated with Offering	Amount Raised	Approx. Date(s) of Offering
Broomfield	Broomfield Shopping Center 09 A, LLC	GDA Broomfield 09, LLC	\$800,000	2009
Clearwater	Clearwater Collection 15 LLC; Clearwater Plainfield 15, LLC	Clearwater Collection 15, LLC; GDA Clearwater 15, LLC	\$6,224,904	2015
Crosspointe	Crosspointe 08 A, LLC	Crosspointe 08 A, LLC	\$4,519,667	2008
Fort Collins	Highlands Ranch Village Center II (HR II 05 A, LLC)	Fort Collins WF 02, LLC	\$2,679,669 ²	2008-2009
	Southwest Commons 05 A, LLC			2008-2009
	Meadows Shopping Center 05 A, LLC			2008-2009
	Laveen Ranch Marketplace 12, LLC			2012
	Trophy Club 12, LLC			2012
Market at Southpark	Market at Southpark 09, LLC	GDA Market at Southpark LLC; Market at Southpark 09, LLC	\$255,000	2010
Loggins Corners				2012
Trophy Club				2012
High Street Condos	2321 S High Street, LLC	2321 South High Street, LLC	\$1,000,000	2014
	2329 S High Street, LLC	2329 South High Street, LLC		
PMG (Plaza Mall of Georgia North)	Plaza Mall North 08 B Junior, LLC	Plaza Mall North 08 A Junior, LLC; Plaza Mall North 08 B Junior, LLC	\$9,025,765	2008 – 2016

² The total funds raised include at least \$50,000 in “roll-over” investments, and as such, real funds were not put into the SPE or the property. Moreover, this amount also includes interests purportedly held by Dragul, and several Dragul insiders including is parents, his mother-in-law, two close personal friends, and Markusch. It is unlikely that these purported investors actually contributed real funds to the deal.

Property	SPE Owner(s) of the Property	Bank Accounts Associated with Offering	Amount Raised	Approx. Date(s) of Offering
Plainfield Commons	Plainfield 09 A, LLC	Plainfield 09 A, LLC	\$2,598,750	2009 – 2013
Prospect Square	Prospect Square 07 A, LLC, Prospect Square 07 B, LLC, Prospect Square 07 C, LLC, Prospect Square 07 D, LLC, PS 16, LLC and PS 16 Member, LLC	Prospect Square 07 A, LLC; GDA PS Member LLC; GDA PS16 Member LLC; PS 16 LLC	\$4,890,079	2007 and 2016
Rose	Rose, LLC	Rose, LLC /Rose, LLC (Not a duplicate - two different accounts)	\$4,980,830	2011 – 2013
Syracuse	Syracuse Property 06, LLC	Syracuse Property 06, LLC	\$2,625,000	2008 – 2009
Village Crossroads	Village Crossroads 09, LLC	GDA Village Crossroads LLC	\$1,707,100	2009 – 2012
Walden	Walden 08 A, LLC	Walden 08 A, LLC; Walden 08 A, LLC; Walden 08 A, LLC (not duplicates - three different accounts)	\$4,705,000	2008
Windsor	Windsor 15, LLC	GDA Windsor Member LLC; Windsor 15 LLC; Windsor 15 LLC (not a duplicate)	\$6,478,715	2015
TOTAL AMOUNT RAISED			\$52,490,479	

56. The above-listed SPEs and amounts raised therefor represent only a portion of the SPEs for which Dragul solicited and raised investor funds. Dragul and the GDA Entities solicited and raised substantial amounts from investors for SPE properties outside of the Commissioner’s period of review.

57. These SPEs were Dragul’s investment vehicles at the time of the Commissioner’s Complaint. Before forming these SPEs, Dragul, in concert with Non-

Dragul Defendants, used multiple other SPE investment vehicles to defraud investors including the sale of promissory notes, and forced roll-over investments from one property to another.

C. The Financial Operations of GDA

58. Upon receiving investor funds at closing of real estate purchases made by the SPEs, Markusch, as CFO of the GDA Entities, typically transferred funds that should have been segregated in SPE accounts into GDA RES accounts and then into accounts held in Dragul's name, individually. The shortfalls were financed by mortgage loans. In some instances, the SPEs were unable to reduce even the principal amount of those mortgage loans, since the SPE's cash flows were insufficient to cover the operating expenses and fictitious profits paid to investors.

59. Beginning at least as early as 2008 and continuing through August 2018, Markusch would provide Dragul with daily account balances for his and his family's bank accounts as well as all of the GDA Entities' accounts, noting what the balances were on the bank's records, in GDA's records, and noting pending transactions that had not yet posted. Markusch advised Dragul how much total was needed to ensure that certain pending transactions would post and in return, Dragul would instruct Markusch which account(s) to transfer the funds from and to on any given day. Markusch completed each transaction, improperly comingling funds among and between the GDA Entities by moving money from account to account.

60. Over time, if a particular SPE was either suffering losses or was disposed of by Dragul for personal profit, rather than paying investors their pro rata share of profits, or allocating pro rata losses to them, Dragul would hold investors hostage in a deal and require them to “roll-over” investors’ equity positions into a newly formed SPE, and would induce investors to contribute additional funds for their new equity position in the rollover SPE. In this manner, Dragul sold more than 100% of the equity interests in at least one SPE, and perhaps more.

61. For example, from approximately 2009 through 2014, Dragul solicited and received investment funds in Plainfield 09 A, LLC (“**Plainfield 09**”), which owned the Plainfield Shopping Center in Indiana. Ultimately, Dragul sold over 194% of the membership interests in Plainfield 09 to approximately 30 investors (the “**Plainfield Investors**”), raising over \$2.5 million, which includes over \$1.5 million of new cash investments. *See* Plainfield Investor Summary Chart, attached as **Exhibit 23**. Without consent of the Plainfield Investors, on March 11, 2015, Dragul sold the Plainfield property for \$5,563,500, for more than a \$1.1 million profit. From escrow, GDA received an undisclosed \$75,000 “consulting fee.” *See* **Ex. 22** (Second Indictment).

62. Again, without giving them the option, Dragul forced the Plainfield Investors to “roll-over” their investment into a new SPE, Clearwater Collection 15, LLC (“**Clearwater**”) which owned property in Clearwater Florida, while also selling interests to new investors. On October 5, 2015, Dragul wrote to the Plainfield

Investors telling them that the Plainfield sales proceeds had been reinvested in the Clearwater property and enclosed Solicitation Materials that Dragul had prepared. Importantly, the solicitation materials, like those discussed below contained material misrepresentation and omissions, including inter alia, overstating the purchase price for the property by \$900,000, and failing to disclose the unauthorized commissions in the amount of \$187,100 and \$100,000 that Dragul paid himself (through GDA) and ACF, respectively. *See* Oct. 5, 2010 Letter and Clearwater Solicitation Materials, attached as **Exhibit 24**.

63. Dragul also used promissory notes to further his fraudulent enterprise and Ponzi scheme. When he was unable to repay the promissory notes as they became due, he would either extend the notes or convert them to equity positions in SPEs without contributions of additional capital. This effectively diluted existing investors' interests without notice to them and without any benefit to the particular SPE.

64. For Example, as alleged in the First Indictment, Dragul's scheme also involved offering investors promissory notes with varying interest rates and durations (typically between three and eighteen months). From approximately 2007 through 2013, solicited by Hershey who had represented that Dragul and GDA were very successful and that Dragul was worth millions of dollars, Dragul sold \$6.4 million worth of promissory notes, most of which were to be repaid over an eighteen-month period at an interest rate of 10%, with interest-only payments for the first six months followed by twelve monthly payments of principal and interest. Dragul did

not register these offerings with either the SEC or the Colorado Division of Securities and was never licensed to sell securities. Dragul defaulted on most of the notes during the interest only payment period, and when investors complained, Kahn stepped in to purportedly “handle it” by continuing to “gaslight” these investors.

65. By the end of 2012, Dragul owed more than \$4 million to investors pursuant to promissory notes issued in 2007 and 2008. Notwithstanding, he offered and sold new promissory notes to 21 new investors, raising approximately \$2.4 million more, without disclosing the unpaid notes presently in default. In some instances, Dragul would convert unpaid, due or past-due notes into membership interests in various SPEs as an alternative way to pay these investors, who Dragul and Kahn referred to as “friends of the house.” See **Ex. 22** (Second Indictment), at 3-5.

66. Dragul also obtained personal loans from investors and secured them with real property owned by various SPEs. In some cases, this was done in violation of express provisions of the governing operating agreements and loan agreements. Dragul represented to investors who purchased promissory notes that their funds would be used for particular purposes related to SPE real estate assets, when in fact Dragul used those funds to support his extravagant lifestyle.

67. For example, one such loan is presently the subject of a pending lawsuit filed against Fox to invalidate a lien on property previously held by the Receivership Estate. See *GDA DU Student Housing A, LLC v. Alan C, Fox*, Case No. 2019CV32374

(Denver District Court) (the “**DU Litigation**”). In or about 2014, Dragul, with the assistance of Hershey, solicited and raised approximately \$1 million³ from seven (7) individual investors, R.L., C.L., M.R., S.L.P. Trust, E.S. K.S. and L. W.⁴ (the “**High Street Investors**”), through the sale of membership interests in the High Street Condo Project, LLC (“**High Street**”). See High Street Investor Detail Chart, attached as **Exhibit 25**. Dragul and the Hershey Defendants misrepresented in the offering materials provided these investors that High Street would be developing residential condominiums and the investment proceeds would be invested in the acquisition and renovation of three parcels of identified real property. Upon information and belief Hershey knew these representations were false and misleading and were made to persuade individuals to invest in the project.

68. Unbeknownst to the High Street investors, in December 2017 and January 2018, Dragul sold the three parcels of real property as well as an Architect’s contract for the project, to two newly formed Dragul controlled SPEs, GDA DU Student Housing 18 A, LLC (“**GDA DU A**”), and GDA DU Student Housing 18 B, LLC (“**GDA DU B**”). Dragul did not roll over the investors into the new SPEs and instead, continued paying distributions to investors at least through June 2018

³ This amount includes a total of \$150,000 that Dragul “rolled-over” from a prior, failed investment, Crosspointe, in which two of the investors E.S. and K.S. had previously invested.

⁴ For the privacy and confidentiality of the GDA Entity Investors, initials are used in the complaint. The investor lists submitted as exhibits and filed as “protected” herewith contain the Investors’ full names.

representing to the High Street Investors that these distributions were actual returns on their investments.

69. GDA DU A consisted of three members – GDA Student Housing Member, LLC (15.79%) (wholly owned by Dragul), and two entities comprised of Israeli investment funds – Hagshama Denver Colorado 2, LLC (56.61%) and Cofund 9, LLC (27.60%) (collectively, the “**Hagshama Members**”). GDA DU A was to be managed by another SPE, GDA DU Student Housing Management, LLC, which in turn, is managed by GDA REM. The December 28, 2017 GDA DU A operating agreement specifically prohibited the manager from encumbering the property unless certain, limited circumstances permitted it. However, on April 11, 2018 – one day before the First Indictment – Fox loaned Dragul \$300,000 as evidenced by a promissory note and purportedly secured by a first deed of trust on one parcel of the three DU properties, both of which were signed by Dragul on behalf of the GDA DU entities. As alleged in the DU litigation, upon information and belief, Dragul and Fox fraudulently created the deed of trust predating the First Indictment. The deed of trust was not recorded, however, until June 11, 2018.

70. Then, on July 25, 2018, more than one month before the Receiver’s appointment, Dragul again fraudulently encumbered the very same property. Fox again loaned Dragul another \$600,000 as evidenced by a promissory note of the same date and executed a second deed of trust transferring that same property to the Public Trustee of Denver County Fox’s benefit. The second deed of trust was not recorded

until July 26, 2018. Neither loan or deed of trust were disclosed to the Hagshama Members, and both were in violation of the GDA DU A operating agreement.

71. Of the \$900,000 loaned by Fox in 2018, none actually went to or benefitted either of the DU SPEs, the properties, or otherwise benefitted the investment. Rather, all money was diverted to and used by Dragul for personal and other purposes. The July 25th \$600,000 loan was deposited into the GDA RES Fortis bank account No. x3186 and thereafter, \$575,000 was paid to Fox for his interest in HC Shoppes 18, LLC; \$21,000 was transferred into Dragul's personal account, and \$4,000 was transferred to various unrelated SPE accounts. Similarly, the May 14th \$300,000 loan from Fox was first deposited directly into the GDA RES Chase bank acct no. x5225, and subsequently, \$92,700 was paid as a distribution to Aaron Steinberg, a relative of Dragul's long-time friend and trusted ally, Marty Rosenberg; \$65,000 was paid to Xin Nick Liu who had a lien on Dragul's residence as collateral for significant personal loans made to Dragul; \$75,000 was paid to Chad Hurst, another long-time friend and investor of Dragul's who oftentimes extended personal loans when Dragul was in need; \$33,800 was transferred to the Rose, LLC SPE bank account; \$30,597.04 was comingled with other funds in the GDA RES Fortis account no. x3186 and ultimately used to make distribution payments to SPE investors; and \$2,092.96 was used for GDA operations. As a result, the buyer of the Estate's interest in the DU entities now seeks to invalidate Fox's liens and have both declared fraudulent transfers. *See* DU Litigation.

72. Instead of treating the SPEs as separate legal entities, Dragul and Markusch, with the Kahn Defendants' knowledge and active assistance, routinely diverted money from SPE accounts to GDA RES accounts and from there to Dragul's personal account. Markusch effected the transfers. Dragul and Markusch thus commingled SPE funds with other SPE accounts, Dragul's personal funds, and funds of Dragul's family members.

73. Dragul and Markusch routinely reversed the comingling process and transferred money from Dragul's personal account to GDA RES and then to SPE accounts at the end of financial reporting periods so they could falsely represent to investors the financial condition of the various SPEs. Immediately after such reporting, Dragul and Markusch transferred the funds once again, but this time, out of the SPE accounts, and would then begin the churning process anew.

74. This scheme resulted in investors not having their funds held or invested in the particular projects and properties where Dragul represented they would be held or invested. Dragul and Markusch used the GDA RES account and the SPE accounts as if they were interchangeable. This commingling of funds was one of the mechanisms Dragul and Markusch used to defraud investors. None of the investor funds transferred in to or out of any particular SPE can be identified substantially as an asset of any SPE, and as a result, the investor funds have lost their identity and have become untraceable. There was no legitimate business reason

for this comingling, which was undertaken to such an extent that it is impossible to know the true ownership of the commingled funds.

75. From GDA's inception in 1995, Dragul's investment scheme was insolvent, due to Dragul's pilfering of the SPEs and his unauthorized and undisclosed use of investor funds for his personal benefit, and for the benefit of his employees and family.

76. While Dragul created SPEs did generate cash flow, the cash flow was not sufficient to pay investors the promised returns. Dragul and Markusch diverted investor funds to Dragul and their family's personal use and to pay fictitious returns or redemptions to other investors.

77. Commencing at least by 2007 and continuing through 2018, Dragul was operating his entire business enterprise as a Ponzi scheme. Dragul and Markusch concealed this ongoing fraud in an effort to hinder, delay, and defraud other current and prospective investors and creditors from discovering the fraud. Money that Dragul received from investors was used to make distributions to, or payments on behalf of, earlier investors. Funds provided to Dragul as loans and for investment purposes were used to keep the operation afloat and enrich Dragul and others.

D. Solicitation of Investor Funds – Private Offerings

78. Dragul, together with the Fox and Hershey Defendants, solicited funds from investors for the stated purpose of purchasing and operating specific commercial properties, primarily retail shopping centers. Each SPE was purportedly a separate

legal entity in which investors were promised profits from the operation, leasing, and eventual sale of the property.

79. Upon information and belief, Fox, has orchestrated a virtually identical fraudulent scheme for many years. As a result, investors have filed numerous lawsuits against the Fox Defendants for the same deceitful and fraudulent conduct he taught Dragul and set forth herein, including, but not limited to the following:

- a. *Fayne et al v. Fox et al*, San Francisco County Superior Court Case No. CGC-10-502073, filed on July 30, 2010 (settled and dismissed with prejudice on August 27, 2013);
- b. *Konkel v. Fox et al.*, Los Angeles County Superior Court (“LASC”), Case No. BC 482 484, filed on April 6, 2012 (settled and dismissed with prejudice on February 4, 2013);
- c. *Steve Belkin v. Fox*, Superior Court of Massachusetts, Case No. 1581CV1267, filed April 13, 2015, later removed to Federal Court (settled on appeal);
- d. *Ross v. Fox*, LASC Case No. BC 576 879, filed on March 26, 2015. Ross, an investor in the Market at Southpark investment (discussed below), sued the Fox Defendants, Dragul, and several others for (i) Breach of Fiduciary Duty; (ii) Fraud; (iii) Securities Fraud; (iv) Elder Abuse (on behalf of Jerry only); and (v) Accounting. Ultimately, the jury returned a plaintiff’s verdict for approximately \$14 million, including \$8 million

in punitive damages. On June 27, 2019, the Fox Defendants filed a motion for a new trial, which was ultimately granted on the grounds that the verdict was allegedly inconsistent because the jury found for the plaintiff on the fraud and breach of fiduciary duty claims, but not on the elder abuse claim.⁵

- e. *Lockie v. Fox*, LASC Case No. 20STCV13841 filed on April 9, 2020 (pending);
- f. *Gadi Maier, et al. v. Alan C. Fox, et al.*, LASC Case No. BC670829 (Settled);
- g. *Blackford v. Fox*, LASC Case No. BC 679 692 (pending);
- h. *Shofler v. Fox*, LASC Case No. BC 679 693 (pending);
- i. *Positano v. Fox*, LASC Case No. BC 722 995 (pending)
- j. *Kerner v. Fox*, LASC Case No. BC 723 521 (pending);
- k. *Mokotoff v. Fox*, LASC Case No. 18STCV01178 (pending);
- l. *Abrams v. Fox*, LASC Case No. 18STCV02200 (pending);
- m. *Berman v. Fox*, LASC Case No. 18STCV05912 (pending);
- n. *Burger v. Fox*, LASC Case No. 19STCV11976 (pending);
- o. *Stewart v. Fox*, LASC Case No. 19STCV16404 (pending);

⁵ On June 27, 2019, the plaintiffs appealed the court's ruling granting Defendants' Motion for a New Trial which set aside the plaintiff's judgment, and on July 22, 2019, Fox cross-appealed. Plaintiffs' opening brief has been filed, the respondents' brief and cross-appellants' opening brief are due shortly. Oral arguments are likely to be scheduled for the end of 2020.

- p. *Aeppli v. Fox*, LASC Case No. 19STCV43821(pending);
- q. *Gerzberg v. Fox*, LASC Case No. 19STCV44851(pending);
- r. *Alon v. Fox*, LASC Case No. 19STCV45048 (pending);
- s. *Menkes v. Fox*, LASC Case No. 19STCV45365 (pending); and
- t. *Reker v. Fox*, LASC Case No. 20STCV00211 (pending).

80. On or about September 3, 2018 the Kahn Defendants sent a \$30,000 invoice to ACF stating it was for the following service: “Reimbursable expense: August Retainer for Ross Judgment Appeal. Mitigation and Containment Advisement (approximately 100 hours).” The Kahn Defendants sent a second invoice for the month of September reflecting the same amount with an identical description of the work included in the invoice as the prior months. Copies of the invoices are collectively attached as **Exhibit 26**. The September 3rd invoice was sent four days after the Receiver was appointed.

81. Importantly, the Kahn Defendants never entered an appearance in the Ross matter on behalf of Dragul, the named GDA entities, the Fox Defendants, or any other Defendant. Notwithstanding this, upon information and belief, the Fox Defendants paid the Kahn Defendants for legal advice to mitigate and contain.

82. The SEC has instituted a civil enforcement action against Hershey, his business partner, Dana Bradley, PHI, and a number of their other joint venture entities for violations Section 17(a) of the Securities Exchange Act of 1993 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and

Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78(o)(a)(1)]. *See SEC v. Bradley, Hershey, et al.*; Case No. 3:19-cv-00490 (U.S. District Court, W.D. N.C., Charlotte Division). The conduct for which the Receiver asserts claims against the Hershey Defendants is substantially similar to the conduct is the basis of the claims asserted by the SEC: fraudulently soliciting investors and pocketing millions in undisclosed and illegal commissions.

83. To solicit investor funds, Dragul, in concert with the Fox and Hershey Defendants, sent prospective investors offering materials that contained executive summaries, financial projections, and other information (collectively, the “**Solicitation Materials**”), which purportedly provided investors with the material information needed to evaluate whether or not to invest in Dragul’s Sham Business.

84. Generally, the Solicitation Materials sent to prospective investors were created by or at the direction of Dragul and his staff, and in some instances the Fox Defendants.

85. The Solicitation Materials contained information material to prospective investors, including historical information about the property, the cost of acquiring the property, the amount of the down payment, the amount to be borrowed, the anticipated closing costs, and the amount needed to be raised from investors for any particular offering. The financial projections included projections of acquisition costs and expenses.

86. The Solicitation Materials contained false and misleading information, including inflated purchase prices and inflated closing costs for the properties and in some instances misrepresented the structure of the investment.

87. As discussed in detail below, in soliciting investments, Dragul and the other Defendants, told prospective investors that the properties to be acquired cost substantially more than they actually did. These misrepresentations about purchase price were designed to allow Dragul, the Fox Defendants and the Hershey Defendants to pay themselves impermissible commissions and fees as set forth below:

Defendant	Total Commissions Received
Gary Dragul	\$19,148,047.10
Markusch Defendants	\$310,196.67
Kahn Defendants	\$1,701,441.92
Fox Defendants	\$10,200,304.81
Hershey Defendants	\$3,175,655.54

Summary charts reflecting the above commissions are attached as **Compl. Exs. 3, 4, 5, 7**, and an updated version of the summary chart reflecting the Fox Defendants Commissions, is attached as **Amended Exhibit 6**.

88. In most instances, the properties had already been purchased when Dragul, and the Fox and Hershey Defendants distributed the Solicitation Materials to prospective investors, but the Solicitation Materials failed to disclose this material fact.

89. The undisclosed and illegal fees Dragul, the Markusch Defendants, the Kahn Defendants, the Fox Defendants and the Hershey Defendants received in

connection with this scheme were deducted as closing costs; some fees were charged during the ownership of the property, typically during refinancing; and some were charged in connection with the sale of certain properties as reflected in the following three examples:

*i. **The Market at Southpark***
(7901-8051 S. Broadway, Littleton, CO)

90. On or about January 26, 2010, Fox sent Dragul Solicitation Materials prepared by ACF to solicit investment funds for a property known as the Market at Southpark.

91. The Executive Summary prepared by the Fox Defendants, and which the Fox Defendants knew would be and in fact were distributed to prospective investors by both Dragul and Hershey in 2010, stated that the purchase price for the property was \$24,750,000, and that it would be necessary to raise \$10,500,000 from investors. The Solicitation Materials the Fox Defendants prepared misrepresented and failed to disclose material information including the actual purchase price, estimated closing costs, and other material financial information. *See **Compl. Ex. 8.***

92. Once received from Fox, Dragul forwarded the Market at Southpark Solicitation Materials to Hershey to distribute to prospective investors in or about April 2010.

93. Upon receipt in April 2010 and thereafter, Hershey distributed the Market at Southpark Solicitation Materials to prospective investors, who relied on them for their investment decision.

94. By distributing the Solicitation Materials to induce investors and prospective investors in 2010, Hershey deliberately withheld or failed to disclose material information to prospective investors concerning the Market at Southpark including the actual purchase price, estimated closing and other costs, material financial information, and that the Hershey Defendants stood to profit from any investment they would make in the SPE.

95. At or about the same time, and with the actual intent to induce investors to invest in the property, Dragul sent the Market at Southpark investors written financial projections misrepresenting that the purchase price of the Property was \$24,750,000 and closing costs were estimated to be \$300,000, and that he would establish an operating reserve of \$950,000 with the funds raised from the offering *See Compl. Ex. 8.*

96. Upon information and belief, the Fox Defendants never maintained an operating reserve for the property. Instead, Fox, like Dragul, comingled the funds that should have been earmarked as reserved with funds from the rest of ACF's operations and when necessary, moved money from account to account.

97. In fact, the purchase price of Market at Southpark was \$22,000,000, \$2.75 million less than Dragul and the Fox and Hershey Defendants represented to investors. *See Compl. Ex. 9.*

98. On August 11, 2009, Market at Southpark 09, LLC, an entity owned and/or controlled by the Fox Defendants, purchased the Southpark property for

\$22 million. At closing, ACF received a \$950,000 “consulting fee,” Dragul, through GDA received \$300,000 as a “consideration fee,” and through his SSC 02, LLC entity, another \$50,000 in fees. *See* **Compl. Ex. 9**.

99. The “Financial Projections” contained in the Solicitation Materials, which Fox and Dragul knew were false and misleading, since at the time the purchase escrow had already closed and the real figures were available, failed to account for undisclosed and unauthorized commissions taken from escrow by Fox and Dragul.

100. The “commissions” taken from escrow on the property were used in furtherance of Dragul and Fox’s overall scheme to defraud. On August 10, 2009, Fox informed Dragul the \$350,000 in “fees” paid to Dragul from escrow on the property would be transferred into yet another SPE account for the September 2009 loan payment on an airplane owned by Dragul and Fox.

101. Between June and August 2010, several months after the property had been purchased, Dragul raised approximately \$255,000 from six individual investors (the “**Southpark Investors**”) from the sale of 100% of the membership interests in GDA Market at Southpark, LLC, which in turn, held a 6% interest in Market at Southpark 09, LLC, an entity formed and controlled by the Fox Defendants. *See* Southpark Investor Detail Chart, attached as **Exhibit 28**. The Southpark Investors reasonably relied on the statements and information contained in the Solicitation Materials and the statements made by the Hershey Defendants who distributed the Solicitation Materials.

102. The Market at Southpark Solicitation Materials that Dragul and the Hershey Defendants distributed to prospective investors failed to disclose that the membership interests being offered were interests in an SPE – GDA Market at Southpark, LLC – that was a member in yet another entity controlled by the Fox Defendants which owned the real estate. The misleading Solicitation Materials completely omitted any disclosure regarding the actual ownership structure of the investment (*i.e.* that they were investing in an entity which held a 6% interest in another entity that owned the property) and as such, Dragul and the Hershey Defendants’ material misstatements led the Southpark Investors to believe that their investments were in the SPE directly owning the property.

103. Moreover, Fox offered and sold membership interests in Market at Southpark at different rates to different categories of investors (*i.e.*, gave greater percentage interests for less money to close family and friends), effectively diluting the Southpark Investors membership interests. For instance, on July 20, 2009, Fox instructed his employee that ACF’s total investment for 100% in Market at Southpark would be \$8.5 million for some Fox family members and \$9.5 million for others. In the Solicitation Materials provided to Southpark Investors, Fox and Dragul represented that a minimum investment of \$52,500 would purchase a 0.500% membership interest, yet at least one of Fox’s family members, Sara Fox purchased a 1.500% interest at the reduced price of \$127,500 (a \$30,000 discount). *See* 07/20/2009 Fox Email, attached as **Exhibit 27**.

104. These misstatements and omissions were designed by Dragul, Fox and Hershey to mislead prospective investors and induce them into investing in the Market at Southpark SPE.

105. On May 13, 2011, the Fox Defendants sent an update letter to the members of Market at Southpark 09, LLC, including to Dragul as the manager of GDA Market at Southpark, LLC, concerning a proposed sale of the property seeking approval by a majority of members to sell the property and roll over investments into an unidentified exchange property. In the letter, Fox makes false and misleading statements to obtain consent to the sale and exchange by a majority of the Members. For instance, the Fox Defendants represented that the total original investment in the property was \$10.5 million in August 2009, suggesting that all membership interests offered were sold. Upon information and belief, the Fox Defendants did not sell all interests offered and an amount significantly less than that was raised and invested in the property.

106. Dragul did not provide his investors with any update or information concerning the prospective sale of the property in which they had invested, and instead, on May 17, 2011, as manager of GDA Market at Southpark, LLC, Dragul executed a ballot authorizing ACF to sell the property “for a net price of not less than \$28,350,000.00 before paying off the loan.”

107. The Fox Defendants sent another property update letter to the investors, which Dragul again received again as manager of GDA Market at

Southpark, LLC, concerning the still pending sale of the property. Enclosed with the letter was a “client summary report” for GDA Market at Southpark, LLC’s investment reflecting that is now held a substantially reduced interest in Market at Southpark 09, LLC of 2.429%. Again Dragul never disclosed any of this information contained in the correspondence to the Southpark Investors.

108. As was common practice, Dragul and his staff sent periodic updates for investors that provided leasing and income information for each property. For properties for which Hershey solicited and raised investor funds, Dragul allowed and even invited Hershey to edit and comment on property updates before sending them to investors.

109. Both the August and November 2011 Market at Southpark property updates drafted by Dragul with input from Hershey that were sent to investors did not include any mention of a plan to market and sell the property or Dragul’s decision to do so as manager of GDA Market at Southpark, LLC. *See Compl. 10A and 10B.*

110. Both Dragul and Hershey knew of the plan to sell the property, as the transaction was pending when the November 2011 property update was prepared, but that information was not disclosed to investors, and Dragul continued to make distributions to them as fictitious profits on their Market at Southpark investment.

111. On November 15, 2011, five days after Dragul sent the November 2011 Property Update letter to Southpark Investors, Dragul and the Fox Defendants sold the Market at Southpark property for \$30 million. At closing, ACF and Dragul

(through GDA) received commissions of \$600,000.00 and \$300,000, respectively. *See Compl. Exhibit 11.*

112. Notwithstanding the \$13,038,594.47 net proceeds received at closing, Dragul and the Fox Defendants required the Market at Southpark investors to “roll over” their investments into two new properties rather than allowing them to cash out by collecting their pro rata share of the sales proceeds.

113. Dragul and the Fox Defendants received at least \$2.2 million in undisclosed fees in connection with the acquisition and sale of the Market at Southpark, which were never disclosed to investors. The misrepresentations as to the purchase price of the property helped to further disguise these undisclosed fees and commissions from investors.

114. In March 2012, Dragul finally provided an investor update letter to the Southpark Investors telling them the property had been sold. In the letter, Dragul misrepresented that GDA Market at Southpark, LLC, which holds a 6.00% interest in Fox’s SPE (and a 2.49% interest in the property), “was not in a position to control the outcome with respect to the sale and vote to exchange into another property.” Dragul failed to disclose that he had executed a ballot approving the sale and voting for an exchange several months before.

115. Having received the GDA letter, disgruntled Southpark Investors began reaching out to Hershey demanding answers and expressing concern that they had not been informed about the sale and asking why their distributions had been

suspended for the past two months. Upon information and belief, the Hershey Defendants knew the property had been sold before the March 2011 letter was sent but failed to disclose it to the Southpark Investors.

116. On March 16, 2012, one of Dragul's employees, Elizabeth Freestone, responded to emails from D.H., one of the Southpark Investors demanding an explanation as to what happened and why he was not informed. Freestone, stated again that the Dragul-controlled entity GDA Market at Southpark, LLC held only a minority interest, and misrepresented that "the 1031 exchange of the proceeds into two new properties is now complete and investment information on both properties will be provided shortly. Combined distributions on the two properties will be 28% higher than distributions on Market at Southpark and will result in an 8.06% annual return on exchanged investment and a 10.57% annual return on your original investment."

117. Dragul required that he give his approval of all proposed investor correspondence in advance of his employees mailing or emailing same. Thus, the statements and representations made to the Southpark Investors, including the foregoing misrepresentations made to D.H. were expressly authorized by Dragul.

118. Upon information and belief, Fox did not obtain approval from a majority of members of Market at Southpark 09, LLC to sell the property and exchange the proceeds into new investments. Nonetheless, Fox sold the property and on February 1, 2012 told the investors, including Dragul on behalf of GDA Market at

Southpark, LLC, that the first of two exchange properties had been identified – Loggins Corners, a shopping center at 1681 Old Pendergrass Road, Jefferson Georgia (“**Loggins**”), which had been purchased on January 31, 2012.

119. As was customary, GDA’s so-called “acquisition team” employees conducted the due diligence and identified the Loggins property for and on behalf of ACF.

120. A total of \$1,937,500.00 was exchanged from the sale of Southpark into Loggins pursuant to Section 1031 of the Internal Revenue Code.

121. Fox’s February 1, 2012 letter to the investors, including to Dragul as manager of GDA Market at Southpark, stated that GDA Market at Southpark, LLC would own 2.824% of the new property.

122. Enclosed with the February 1, 2012 investor letter from the Fox Defendants were Solicitation Materials for Loggins which stated that the purchase price for the property was \$7,187,500. In fact, the property was purchased for \$5.25 million – Fox and Dragul thus knowingly overstated the price by nearly \$2 million. *See 2/01/12 ACF Letter and Loggins Solicitation Materials, attached as **Exhibit 29**, at 2.*

123. The Loggins Solicitation Materials also represented that \$3.75 million in cash was required, factoring in the inflated purchase price of \$7.817 million, loan and closing costs of \$200,000, operating reserves of \$300,000 less a new \$3,937,500 loan. The purported “projections” omitted GDA’s \$150,000 commission taken from

escrow of the Loggins purchase on January 12, 2012, which was not authorized by or disclosed to the Southpark Investors. *Id.*

124. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of \$300,000 as represented in the Loggins Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF's operations, including investment funds, in an account other than the designated SPE account. *See id.*, at p. 2.

125. In February 2012, Fox and Dragul represented to Southpark Investors, through the distribution of the Loggins Solicitation Materials, that they could acquire a 1.000% interest in the property for a minimum investment of \$37,500. Upon information and belief, as he did with Southpark, Fox offered and sold membership interests to insiders at an undisclosed reduced rate, thereby diluting the Southpark Investors' interests therein without commensurate consideration. *See id.*

126. On February 9, 2012, the Fox Defendants provided investors, including Dragul on behalf of GDA Market at Southpark, with information regarding the second exchange property for Market at Southpark had been recently acquired, Tower Plaza, a shopping center located at 3471-3511 North Salida Court, Aurora, Colorado ("**Tower Plaza**"). In the investor letter, Fox represented that GDA Market at Southpark, LLC would own 2.927% of the property, which would have an estimated cash flow of 8.06% and a projected annual return of 10.08%. *See* ACF Investor Letter and Tower Plaza Solicitation Materials, attached as **Exhibit 30**, at 2.

127. Enclosed with the February 9, 2012 investor letter from the Fox Defendants were the Solicitation Materials for Tower Plaza which stated that the purchase price for the property was \$18.25 million when in fact,, the property had already been purchased for \$17.025 million. *See id.*

128. In February 2012, Fox and Dragul represented to Southpark Investors, through the distribution of the Loggins Solicitation Materials, that they could acquire a 0.750% interest in the property for a minimum investment of \$58,500. Upon information and belief, as he did with Southpark, Fox offered and sold membership interests in Tower Plaza to Fox insiders at an undisclosed reduced rate, thereby diluting the Southpark Investors' interests therein without consideration.

129. The Tower Plaza Solicitation Materials also represented that \$7.8 million in cash was required, factoring in the inflated purchase price of \$18.25 million, loan and closing costs of \$250,000, operating reserves of \$300,000 less the new \$7.8 million loan. The purported "projections" omitted GDA's \$180,000 commission and ACF's \$545,000 commission taken from escrow of the Tower Plaza closing on February 9, 2012, neither of which were authorized or disclosed to the Southpark Investors. *See Ex. 30*, at 3.

130. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of \$300,000 as represented in the Solicitation Materials. Rather, upon information and belief, like Dragul, Fox comingled all of the

funds from ACF's operations, including investment funds, in an account other than the designated SPE account. *See id.*

131. In or about March 2012, Dragul provided the Loggins and Tower Plaza Solicitation Materials to the Southpark Investors. Because Dragul's employees were involved in all aspects of the acquisitions of both properties, he knew the Solicitation Materials contained materially false and misleading information about the investment and armed with such knowledge, he convinced the Southpark Investors to stay in the investment when they had the right to liquidate their interests.

132. Fox knew and expected Dragul would provide both the Loggins and Tower Plaza Solicitation Materials that he prepared to the Southpark Investors and that the investors would reasonably rely on the facts and material information contained therein.

133. On February 20, 2016, the Fox Defendants closed a refinance of the Loggins loan used to acquire the property in 2012. From the new \$4.5 million loan, ACF received an undisclosed and unauthorized commission of \$45,000, which represented equity in the property to which the Southpark Investors were entitled.

134. Dragul never disclosed the 2016 Loggins refinance, or ACF's commission taken therefrom to the Southpark Investors.

135. On April 23, 2018, shortly after Dragul's First Indictment, the Fox Defendants sold Loggins for \$6.625 million.

136. From escrow of the sale, GDA received \$99,371 in so-called fees, which were deposited in the GDA RES account and distributed as follows:

Amount	Description
\$99,371.00	“GDA Fee” from escrow of Loggins sale
(\$57,000.00)	Gary Dragul (personal account)
(\$27,321.00)	Replenish negative balance on GDA RES Fortis account no. x2984 (Investor Note Payment account)
(\$7,500.00)	Ronen Sadeh Consulting
(\$7,500.00)	Transferred to various GDA SPE property accounts
(\$50.00)	Bank Fees
\$0.00	Total

137. Upon information and belief, the Fox Defendants did not obtain approval from a majority of the members of the ACF controlled SPE that owned the Loggins property to sell it.

138. On June 25, 2018, the Fox Defendants reported to Dragul, as manager of GDA Market at Southpark, LLC, that the Loggins sale had closed and enclosed a check for \$70,767.55 representing the GDA Market at Southpark, LLC’s share of the sales proceeds. Fox knew or should have known that Dragul would not distribute those funds to the Southpark Investors, whose identities Fox knew because Dragul had given him the Membership Purchase Agreements. Despite that knowledge, Fox did nothing to ensure or confirm that Dragul’s downstream Southpark Investors actually received their distributions.

139. Of the Loggins sales proceeds deposited on July 5, 2018, into the GDA RES Fortis bank account number x3186, Dragul, who did not own a membership interest in GDA Market at Southpark, LLC and was therefore not entitled to any of the proceeds, spent the money as follows:

Amount	Description
\$70,767.55	GDA Market at Southpark, LLC's Loggins Corners Sale Proceeds
(\$56,981.12)	Transferred to GDA RES Fortis Acct. No. x 2984 ⁶
(\$6,500.00)	Transferred to GDA Client Trust Fortis Acct No. x3151 ⁷
(\$3,071.42)	Transferred to Gary Dragul's personal account
(\$2,200.00)	Cornerstar Wine & Liquor, LLC
(\$1,909.50)	Audrey Ahrendt (Dragul's mother-in-law)
(\$105.51)	Bank Fees
\$0.00	Total

140. As of the date the Receiver was appointed, Dragul never disclosed to the Southpark Investors that Loggins had been sold or that he kept all of the proceeds owed to GDA Market at Southpark, LLC and the Southpark Investors. When, on November 18, 2018, the Receiver asked Dragul about the Loggins investment, Dragul misrepresented to the Receiver that had been sold in the summer of 2018 and that

⁶ Of the \$56,981.12 transferred into the GDA RES account, \$50,071.63 was used to pay down an American Express credit card balance.

⁷ The \$6,500 transferred to the GDA Trust Account was eventually used, along with other improperly transferred funds, to make distributions to other Dragul investors, but not to pay the Southpark Investors.

distributions of \$70,000 were to be made to investors, but were not because of the filing of the Enforcement action.

141. Only after the Receiver's comprehensive analysis of the GDA server, emails, and other document collections obtained from third parties was it uncovered that Dragul kept the Loggins sales proceeds for his personal use and benefit, and failed to pay them to the Southpark Investors.

142. Moreover, upon information and belief, Dragul and the Fox Defendants misappropriated more money from investors and the property than is represented on the settlement statements, through additional undisclosed fees and/or secret profits.

ii. Plaza Mall of Georgia North
(3410 & 3420 Buford Drive, Buford, Georgia, 30519)

143. Beginning in or about 2008 and continuing through 2016, Dragul provided prospective investors with at least three different versions of an Executive Summary and Financial Projections for a property in Buford, Georgia known as Plaza Mall of Georgia, North ("PMG") for the purpose of soliciting investments therein. *See Compl. Ex. 12* (PMG Solicitation Materials, V.1); the PMG Solicitation Materials, V.2 attached as **Exhibit 31**; PMG Solicitation Materials, V.3, attached as **Exhibit 32**.

144. The first version of the Executive Summary prepared by Dragul and distributed to prospective investors, upon information and belief from 2008 through 2012 represented that the purchase price for the property was \$26,979,567.00, and that it would be necessary to raise \$7,667,346.00 from investors with \$100,000

minimum investments on which they could expect an 8% return. *See Compl. Ex. 12*, at 1.

145. On November 14, 2008, per Dragul's instructions, his staff forwarded the first version of the PMG Solicitation Materials to Hershey, for the express purpose of his distributing the Materials to prospective investors in PMG for which Hershey would receive a 10% commission from Dragul. *Id.*

146. At or about the same time, and with the actual intent to induce investors to invest in the property, Dragul sent prospective PMG investors written financial projections for the property misstating the \$26,979,567 purchase price and representing that loan and closing costs were estimated at \$300,000, and providing for an operating reserve of \$950,000 and loans payable in the amount of \$19,930,221. *See id.*, at 2.

147. In fact, the purchase price of PMG was only \$25.92 million, or \$1,059,567 less than Dragul represented in the Solicitation Materials. *See Compl. Ex. 13.*

148. The subsequent versions of the PMG Solicitation materials also contained material misrepresentations as to the purchase price of the property, and contained varying figures for both the projected returns on the investment, and the minimum investment required. For instance, in a second version which, upon information and belief, Dragul and Hershey distributed to investors in 2013, represented that the purchase price for the property was \$29,113,618 and for a

minimum investment of \$100,000 investors would get a 7% return on their investment. *See* **Ex. 31**. In yet a third version Dragul and Hershey distributed to investors from 2014 to 2015, Dragul represented the purchase price was \$28.47 million and for a minimum investment of \$100,000, investors could expect an 8% return on their investment. *See* **Ex. 32**.

149. Based on the three versions of the PMG Solicitation Materials, Dragul raised \$2,740,150 in new cash from 46 investors (the “**PMG Investors**”) from 2008 through 2016. *See* PMG Investor Detail Chart, attached as **Exhibit 33**. Dragul “rolled over” approximately \$2,449,850 from some of the 46 investors’ prior investments in various failed GDA SPEs.

150. On December 24, 2008, Dragul, through Plaza Mall North 08 B Junior, LLC (“North 08 B”), purchased the PMG Property from Windward Star Associates, LLC (“Windward”) for \$25.92 million, \$1.06 million less than the amount represented in the Solicitation Materials. *See* **Compl. Ex. 13**.

151. Dragul also created a separate entity, Plaza Mall North 08 A Junior, LLC (“North 08 A”) which became a member of North 08 B, the owner of the Plaza Mall property. The operating agreement for North 08 B stated that North 08 A made an initial capital contribution of \$4.766 million to the company; Windward, which also became of a member of North 08 A, and was credited with a contribution of \$1.204 million, an amount reflecting \$5.17 million in equity minus a distribution of \$3.966 million. *See* **Compl Ex. 2**, at ¶ 14; *see also* **Compl Ex. 13**.

152. Upon completion of the transaction, North 08 A and Windward held 76.7% and 23.3% interests, respectively, in North 08 B, and thus, the property. *Id.*

153. Through the escrow for Dragul's purchase of PMG, ACF was paid a "consulting fee" of \$500,000.00; GDA was paid a fee of \$300,000.00 with Dragul's "SSC" entity receiving another \$75,000 in fees. *See Compl Ex. 13.*

154. Of the \$9,858,000 Dragul used to acquire North 08 A and, the 76.7% interest in North 08 B, Fox through his irrevocable trust (the "**Fox Trust**") loaned Dragul \$5.2 million to complete the acquisition, with the understanding that Dragul would repay Fox with funds raised from investors. On December 4, 2008, Dragul told Fox that he could raise \$1.25 million by December 31, 2008, \$1 million by February 15, 2009, \$1 million by March 31, 2009, \$1.5 million by July 31, 2009 and \$2.5 million by September 31, 2009. Ultimately, Dragul repaid Fox \$990,000 in the months following the closing, making the Fox Trust's net investment in North 08 A \$4.21 million.

155. In 2015, in reliance on the misleading third version of the PMG Solicitation Materials distributed by Dragul and the Hershey Defendants, Dragul induced several of the PMG Investors to "roll over" a total of \$413,000 previously invested in other failed GDA SPEs, or converted from outstanding promissory notes sold by Dragul in prior years, to acquire ownership interests in the North 08 B entity. *See Ex. 33.*

156. To give these additional new “investors” their membership interests in North 08 B entity, Dragul diluted the interests of existing PMG Investors who had invested real money in the deal. Upon information and belief, Dragul did not disclose the dilution to the existing PMG Investors.

157. On April 1, 2016, the Fox Trust entered into an agreement to sell its entire interest in North 08 A to another newly-formed Dragul SPE, Plaza Mall North 16, LLC (“**North 16**”) for \$3.8 million. At that time, the Fox Trust held a 45.098% interest in North 08 A, which represented a 34.56% interest in the North 08 B entity and thus, the PMG property. *See Compl. Ex. 2*, at ¶ 18. The transaction was accomplished in two phases. The transaction was reflected in a Membership Interest Purchase Agreement dated February 17, 2016 and amended on March 30, 2016 in which the Fox Trust sold 45.098% of its interest in North 08 A to North 16.

158. The funding for North 16’s purchase of the Fox Trust’s interest in North 08 A came from Hagshama, an Israeli real estate investment company, which contributed capital through two SPEs: Hagshama Atlanta 19 Buford, LLC and CoFund 3, LLC. In exchange for Hagshama’s payment of \$4.6 million (\$2,631,579 from Hagshama Atlanta and \$2 million from CoFund 3), the Fox Trust transferred its 45.098% interest in North 08 A to North 16. As a result, Hagshama, through its interest in North 16, obtained a 34.59% ownership interest in North 08 B. The transaction closed on April 1, 2016, and from escrow, GDA received an “acquisition fee” of \$100,000, a \$24,600.00 “fee” was paid to CG despite \$100,000 already paid in

legal fees to a different law firm, and a “consulting/loan assumption fee” of \$25,400 was paid to Markusch. *See* **Compl. Ex. 14**; *see also* **Compl. Ex. 2**, at ¶ 18.

159. On April 27, 2017, Dragul, through North 08 B, sold the PMG property (*via* transfer of the entirety of North 08 B’s interest in the property to an unrelated third-party buyer) for \$32 million. At closing, GDA received a “fee” of \$560,000, Windward was paid \$1.204 million for its membership interest, and other expenses were deducted. The net sales proceeds were \$9.867 million. *See* **Compl. Ex. 15**.

160. Of the \$9.867 million in net sale proceeds, the two largest investors were paid first: CoFund 3 received \$2.447 million and Hagshama Atlanta received \$3.22 million. For its part, GDA received \$4.191 million, an amount sufficient to repay less than half of what Dragul raised from and owed to his smaller, non-preferred investors. However, not only did Dragul fraudulently conceal that the PMG property had been sold, he continued to make monthly payments of fictitious profits to these smaller PMG Investors as though the Plaza Mall property were still owned by North 08 A.

161. From April through September 2018, one year after the sale of the Plaza Mall property, the Kahn Defendants incurred \$25,045.64 in legal fees for work done in furtherance of Dragul’s fraudulent Scheme. Knowing Dragul had not informed PMG Investors that the Plaza Mall property had been sold in April 2017, in his capacity as counsel for Dragul and the GDA Entities, Kahn provided consultation and legal advice to Dragul regarding purported “reconciliation” of investor distributions

from PMG sales proceeds, “Manager advisement,” tax filings, post-tax filing reconciliations, retroactively remedying entity organizational gaps, winding down and dissolution of the entities, including “attendant risk, funding needs and liability mitigation.” See 7/23/2018 CG PMG Invoice, attached as **Exhibit 34**.

162. In 2018, Kahn even assisted in drafting correspondence to the PMG Investors to be sent under Dragul’s signature regarding PMG.

*iii. Fort Collins WF 02, LLC
Highlands Ranch, Meadows Shopping Center,
Southwest Commons, Laveen Ranch and Tower Plaza*

163. On October 15, 2002, Dragul formed and organized the SPE, Fort Collins WF 02, LLC (“**FC WF 02**”) and on January 23, 2003, Dragul and Fox executed its operating agreement showing they owned 51% and 49% respectively.

164. Upon information and belief, FC WF 02 had originally owned a Whole Foods center at 2201 S. College Avenue, Fort Collins, Colorado, until it had been sold on or about May 6, 2005.

165. The proceeds from the Whole Foods sale were subsequently exchanged into three new properties, ultimately owned by Fox SPEs – (1) Highlands Ranch Village II Center, in Highlands Ranch Colorado (“**Highlands Ranch**”); (2) Meadows Shopping Center (“**Meadows**”), in Lone Tree Colorado; and (3) Southwest Commons (“**SW Commons**”) in Denver Colorado.

166. On May 19, 2005, newly formed Fox SPE's purchased Highlands Ranch for a total purchase price of \$29.125 million. From escrow, Dragul received \$300,000 and ACF received \$300,000 as "consideration."

167. The portion of proceeds rolled over and attributed to FC WF 02, a member in the Fox SPE that owned the property, was \$750,000 for a 7.5% interest in the Fox SPE, which owned the Highlands Ranch property.

168. On June 9, 2005, newly created Fox SPE's purchased the second replacement investment property, Meadows, for a total purchase price of \$33 million. Dragul received a \$400,000 commission directly from escrow.

169. Upon information and belief, upon the acquisition of Meadows, FC WF 02 had an 8.264% interest in the real property, Meadows.

170. On August 18, 2005, the third and final replacement investment property, SW Commons, was purchased. But this one was first purchased by GDA RES for \$55.821 million and on the very same day, in a separate transaction, GDA RES sold the property to newly formed Fox SPEs, Southwest Commons 05 A through I, LLC, for \$59.5 million, a \$3.69 million profit. FC WF 02 was the sole member of Southwest Commons 05 E, LLC, and owned a 5.5% interest in the real property, SW Commons.

171. Fox and Dragul each took undisclosed and unauthorized commissions from escrow in the second sale of SW Commons of \$400,000 and \$500,000, respectively.

172. Beginning in 2008, Dragul began sending solicitation materials to prospective investors fraudulently representing that their investment would be used for the three investment properties, Highlands Ranch, SW Commons and Meadows, when in fact, Dragul was soliciting funds to repay nearly \$3.3 million Fox had loaned him for personal and business purposes unrelated to the FC WF 02 properties.

173. In addition to Dragul's solicitation efforts, in or about April 2008, Dragul provided Hershey with materials on the three properties in which FC WF 02 held an interest for the purpose of Hershey to solicit prospective investors to buy membership interests in those properties. Specifically, Dragul authorized Hershey to sell up to \$650,000 in membership interests, for which Hershey would receive a 6% commission on each investment made.

174. On April 24, 2008, Dragul told Hershey that he should tell prospective investors that the return on their investments would be 7% and provided copies of the rent rolls for the properties assuming that these rent rolls would be of more value to prospective investors than formal Solicitation Materials.

175. In soliciting investors in 2008, neither Dragul nor Hershey provided material information to prospective investors for the three properties, that would allow them to make informed decisions, such as the purchase price of each property, the total amount being offered, financial projections, information on any of the three loans in place, the projected length of the investment, and the like.

176. As of March 22, 2009, Dragul had sold all of the membership interests in FC WF 02, LLC to approximately 40 investors who collectively invested \$2.36 million in cash and \$292,000 in “roll-overs” (\$192,000 from Southlake 07 D, LLC and \$100,000 from Walden 08, LLC) (the “**FC Investors**”). *See* FC Investor Detail Chart, attached as **Exhibit 35**.

177. On February 5, 2009 one of the FC Investors, R.G., whose investment had been solicited by Hershey, reached out to Hershey and asked what his options were to cash out his \$100,000 investment in the FC WF 02, LLC deal due to financial strains. Hershey forwarded the email to Dragul for instruction, Dragul responded on June 9, 2009 but did not provide an option to cash out due to Dragul and GDA’s own financial strains.

178. There is no provision in the October 15, 2002 FC WF 02 operating agreement, the Solicitation materials or the Membership Purchase Agreements that this investor executed and received from Dragul that limits how or when an investor such as R.G. could cash out of a deal. Nonetheless, Dragul held this investor – and others in the coming years – hostage, in the deal because the funds invested in this and all other deals were never actually held in the SPE for which they were intended, and Dragul’s Ponzi Scheme left GDA with insufficient capital to satisfy its obligations, including complying with investors’ cash-out requests.

179. At some point in 2009, Dragul diluted all FC Investors’ membership interests in the SPE, upon information and belief, without their knowledge or

consent, in order to “gift” membership interests to “friends of the house,” none of whom invested actual funds into the deal, but still received monthly distributions from 2009 through 2018. These additional FC Investors included Dragul’s mother-in-law, Audrey Ahrendt (3.603%); Dragul (4.3132%); Dragul’s parents, Paul Dragul (1.8022%) and Paulette Dragul (1.8022%); long-time friends of Dragul, Russel Becker (3.6034%) and Robert Kauffman through Prima Center 07, LLC (0.4491%); and Dragul’s loyal employees, Defendant Markusch (1.8022%) and Kristen O’Donoghue (3.034%). *See Ex. 35.*

180. On November 20, 2011, Fox, with the assistance of Dragul and the GDA staff sold the Highlands Ranch property in which FC WF 02 held a 7.5% interest in the Fox SPE that ultimately owned the property, for \$27,634,052 from which Fox and Dragul took \$110,600 and \$55,200 in commissions, respectively.

181. Neither Fox nor Dragul provided any notice of the sale to or obtained consent or approval of any of the FC Investors before the sale, which upon information and belief, was required by the governing Fox SPE operating agreement.

182. On December 13, 2011, the Fox Defendants sent an update letter to the investors in Highlands Ranch, including Dragul on behalf of and as manager of FC WF 02, advising that the property had been sold and the proceeds would be exchanged into a new property that had not yet been identified, but that the investors could expect a 20% increase in regular monthly distributions. While the proceeds were being held by the exchange company, Fox suspended all monthly distributions.

183. On January 11, 2012 Dragul informed the FC Investors of the sale and upon information and belief, fraudulently represented that a majority of the owners of HR II 05, LLC voted to sell the property and exchange it into another and the FC Investors “were not in a position to control the outcome.” Dragul provided the FC Investors with three fictitious options: (1) maintain the investment in FC WF 02 and reinvest any proceeds from the sale of Highlands Ranch into an exchange property; (2) a Fox-owned SPE would purchase half of an investment if an FC Investor wished to cash out, but such payment would not be made until after closing on the exchange properties and the investor would not receive any distributions for the remaining half of their investment – essentially surrendering that half to Fox and Dragul; or (3) Fox would use “best efforts” to find a new investor to buy out those who wished to cash out, which according to Fox, would take approximately 45 days after the exchange was completed and would forego all monthly distributions.

184. Almost immediately after Dragul sent the January 11, 2012 “update” about the sale of Highlands Ranch, several angry FC Investors contacted both Hershey and Dragul expressing outrage that they were neither informed about the sale of the property nor given an opportunity to consent to its sale or exchange.

185. In January and February 2012, two different FC Investors S.L. and K.S., not only raised these same concerns about the sale but also questioned Dragul and Fox’s representation that they could expect a 20% increase in monthly cash

distributions when, in the same letter, they also represented that a replacement property had not yet been identified.

186. As was common, instead of responding to these investor inquiries with information and explanation as to the topic at hand, Dragul instead responded to one of the two FC Investor's questions with a lengthy email pointing out all of the hard work and long hours he and his staff had been working on a bankruptcy filing for an unrelated SPE – Walden Park. Dragul disingenuously went on: "Education is power and I welcome you to come and get educated about what we are doing at GDA daily in favor of our investors." Ultimately, Dragul provided the investor with no material information and instead shifted blame to Fox whom he represented had not responded to his requests for the same information when in fact, Dragul and his GDA staff had been working directly with Fox and ACF to identify and close on two new replacement properties.

187. Both Dragul and Fox knew all details about the replacement properties but withheld that information from the Investors in order to avoid investor objections or questions about the new acquisitions. In fact, Dragul, on behalf of GDA RES executed the initial purchase and sale agreement for one of the two replacement properties (Laveen Ranch Marketplace) on January 12, 2012, and ultimately assigned it to Fox's SPE.

188. Upon information and belief, Dragul and Fox intentionally withheld material information about the two replacement properties from the FC Investors

when specifically asked until after escrow closed on both in order to ensure these Investors' funds could be used to acquire the new properties and to conceal the fraudulent transfers made to both Defendants from the closings.

189. In light of the flurry of angry investor calls and emails received by Hershey and Dragul, Hershey drafted an investor update letter to be sent by GDA under Dragul's signature, providing the same false and misleading, vague and unhelpful statements Dragul had previously provided to S.L and K.S.

190. On March 23, 2012 ACF sent investor update letters, including to Dragul as manager of FC WF 02, with information on the two newly acquired exchange properties the FC Investors' Highlands Ranch investments were exchanged into – Trophy Club Plaza in Trophy, Texas (“**Trophy Club**”) and Laveen Ranch Marketplace in Phoenix, Arizona (“**Laveen**”).

191. Enclosed in Fox's March 23, 2012 letter to the FC WF 02 Investors were the Trophy Club and Laveen Solicitation Materials, both of which were prepared by the Fox Defendants, which contained materially false and misleading statements and figures, and which were intended to and did in fact, induce the FC Investors to keep their money in the deal. *See* 3/23/12 ACF Letter encl Trophy Club and Laveen Solicitation Materials, attached as **Exhibit 36**.

192. The Trophy Club Solicitation Materials represented that the purchase price of the property was \$16.9 million, when in fact it was purchased by Fox's newly formed SPE, Trophy Club 12, LLC, on March 15, 2012 for \$14.9 million – inflating

the price by nearly \$2 million. *See Ex. 36*, at 2; and 3/16/12 Trophy Club Settlement Statement, attached as **Exhibit 37**.

193. The Trophy Club Solicitation Materials also represented that \$3.887 million in cash was required, factoring in the inflated purchase price of \$16.9 million, loan and closing costs of \$250,000, operating reserves of \$500,000 less the new \$13.736 million loan. The purported “projections” omitted ACF’s \$298,000 commission taken from escrow of the Trophy Club purchase on March 16, 2012, which was not authorized or disclosed to the investors. *Id.*

194. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of \$500,000 as represented in the Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF’s operations, including investment funds, in an account other than the designated SPE account. *See Ex. 36*, at 2.

195. Also enclosed in the March 23, 2012, ACF investor letter sent to Dragul for and on behalf of WF FC 02 were the solicitation materials for Laveen prepared by Fox, which contained false and misleading representations intended to induce the FC Investors to stay in the deal. *See id.*

196. The Laveen Solicitation Materials prepared and distributed by Fox to the FC Investors stated that the purchase price was \$4.5 million, when it was actually purchased on March 14, 2012 for \$3.88 million - \$460,000 less than stated in the

Solicitation Materials. *See* **Ex. 36**, at 5-6; *see also* 03/14/12 Laveen Settlement Statement, attached as **Exhibit 38**.

197. The Laveen Solicitation Materials also represented that \$2.234 million in cash was required, factoring in the inflated purchase price of \$4.5 million, loan and closing costs of \$150,000, operating reserves of \$300,000, less the new \$2.716 million loan. The purported “projections” omitted GDA’s \$50,000 and ACF’s \$75,992.99 commissions taken from escrow of the Laveen purchase on March 14, 2012 neither of which were authorized or disclosed to investors. *See id.*

198. Moreover, upon information and belief, the Fox Defendants never maintained an operating reserve of \$300,000 as represented in the Solicitation Materials. Rather, like Dragul, Fox comingled all of the funds from ACF’s operations, including investment funds, in an account other than the designated SPE account.

199. Upon information and belief, Fox offered and sold membership interests in Trophy Club and Laveen at different rates to different categories of investors (*i.e.*, gave greater percentage interests for less money to close family and friends), effectively diluting the FC Investors membership interests.

200. Months after the purchase of Laveen and Trophy Club, on April 27, 2012, Dragul informed the FC Investors that Fox had closed escrow on the two replacement properties for Highlands Ranch, Trophy Club and Laveen. Without any intention of locating investors to buy out those who wished to cash out, Dragul advised that none had been located yet but the efforts were ongoing. Dragul enclosed

the Trophy Club Solicitation Materials prepared and distributed by Fox with actual knowledge that the representations therein were false and misleading, including but not limited to those set forth in paragraphs 192 through 195 and 197 through 200, above.

201. On March 24, 2016, the Fox Defendants closed on a refinance of Laveen, for which Fox obtained a new \$3.173 million loan from Morgan Stanley. As was customary for Fox and Dragul, Fox misappropriated \$37,120 from the refinance as a purported “commission.”

202. On March 20, 2016, Fox informed Laveen investors, including Dragul for and on behalf of FC WF 02 and its Investors, that he had closed on the refinance. However, Fox failed to disclose the unauthorized commission taken therefrom. Because the commission was paid from funds representing equity in the property, the FC Investors were entitled to their pro rata share which had been misappropriated by Fox.

203. Also, in the March 20, 2016 letter to investors, Fox represented that the net loan proceeds from the refinance were \$861,196, which “will be reinvested to earn approximately 4% annually which will add more than \$34,000 to annual income.”

204. On September 13, 2018, shortly after the Receiver was appointed, Fox sent an update letter to the investors in Laveen, including to Dragul for and on behalf of FC WF 02 and the Investors therein, representing that he had executed a contract to sell Laveen and seeking investor approval for the sale and authorization to

exchange the investment proceeds into a new property. *See* 9/13/18 ACF Laveen Sale Letter, attached as **Exhibit 39**. In the September 13th letter, Fox represented to the FC Investors that a contract was in place to sell the property for \$5.795 million, which Fox represented, would result in at least \$3 million available to distribute to the investors or exchange into a new property.

205. To obtain the consent of investors to sell the property and exchange the proceeds into a new property, Fox misstated that \$2.334 million in membership interests had been sold in March 2012 so he could represent an inflated return on the investment of 34%. In fact, Fox did not sell all membership interests in the project and as such, the investors' return was less than 34%. *Id.*

206. Also to induce the investors to consent to the sale and exchange, upon information and belief, Fox represented that "a large number of the investor accounts [were] negative as of December 31, 2017," but failed to include a statement of WF FC 02's investor account in the letter and did not advise as to the current balance. *Id.*

207. Fox asked investors to execute the ballot attached to the letter and return it no later than September 30, 2018. *Id.*

208. Neither Dragul nor Fox produced the September 13th Laveen sale letter or ballot to the Receiver – the only individual with the authority to execute the ballot approving the sale and exchange – until several months later.

209. On April 1, 2019, Dragul directed his employee to forward the September 13, 2018 ACF letter to the Receiver and to induce the Receiver to agree to

the sale and exchange, represented the sale would produce \$71,913 in proceeds to FC WF 02. *See* 4/01/19 Email, attached as **Exhibit 40**.

210. In response, the Receiver requested asked for information about the investment, including financials, business organization documents and the like, but received nothing more. The Receiver did not execute the ballot and therefore did not consent to the sale of the property or the exchange.

211. Upon information and belief, Fox did not obtain consent from a majority of the investors in Laveen to sell the property. Nonetheless, on April 25, 2019 – only 24 days after the Receiver was first provided with the notice and ballot – Fox sold Laveen for \$6.575 million - \$780,000 more than he represented to investors and the Receiver in his September 30th letter. *See* Laveen Real Estate Transaction History Report, attached as **Exhibit 41**.

212. Fox still refuses to produce the governing organizational documents, syndication and investor records, financial records, purchase and sale documents, and other relevant materials the Receiver has requested concerning Laveen Ranch and the Estate's other ACF investments. Thus, is it unknown at this time what proceeds the Estate is entitled to from the sale of the Laveen property, how much Fox and Dragul misappropriated from escrow in "commissions," or other details about this investment.

213. Since the Receiver's appointment on August 30, 2018, through the present, the Fox Defendants have withheld monthly distributions of at least \$26,248

for various projects, including Trophy Club, to which FC WF 02 is entitled. These distributions are property of the Receivership Estate and as such, the Receiver has been forced to file a turnover motion to recover the withheld distributions and obtain relevant documents, which remains pending in the Receivership Court.

214. Fox has claimed he is withholding distributions out of concern that they will not be paid to downstream investors (*i.e.*, the FC Investors). He expressed no such concern, however, in the years he made the distributions to Dragul for and on behalf of FC WF 02, LLC, with actual and/or constructive knowledge that Dragul was pocketing most of the funds for himself or diverting them elsewhere.

E. Real Estate Transfers Between Dragul and Fox – Prospect Square

215. The Fox Defendants and Dragul routinely transferred SPE properties to each other at inflated prices in order to pay themselves undisclosed fees at the expense of investors.

216. For example, in or about October 11, 2007, Dragul, through his newly created SPE, Prospect Square 07 A, LLC, purchased a shopping center located at 9690 Colerain Avenue, Cincinnati, Ohio known as Prospect Square (the “Prospect Property”).

217. The purchase of the Prospect Property was financed with a \$12.9 million loan from Royal Bank of Canada, evidenced by an October 10, 2007, promissory note, which was subsequently assigned and transferred three times before MSCI 2007-IQ16 Retail 9654, LLC (the “Prospect Lender”) acquired it.

218. The Prospect Property was owned as tenants-in-common by five different SPEs – Prospect Square 07 A, LLC (57.35%), Prospect Square 07 B, LLC (2.21%), Prospect Square 07 C, LLC (5.54%), Prospect Square 07 D, LLC (4.16%), and Prospect Square 07 E, LLC (30.74%). The foregoing entities are referred to as the “Prospect SPE’s”).

219. In the Solicitation Materials prepared by Dragul and provided to prospective investors, he represented that the purchase price for the property was \$18.33 million, when in fact he purchased the property for \$16 million, \$2.33 million less than represented to investors. **Compl. Ex. 16.**

220. In reliance upon the false and misleading Solicitation Materials distributed by Dragul and the Hershey Defendants in or about 2007, investors ultimately contributed approximately \$5 million through their purchase of ownership interests in the SPE that owned the Prospect Property.

221. Hershey was paid \$306,000 at the Prospect closing as an undisclosed and illegal “commissions.” *See* **Compl. Ex. 17.**

222. On January 29, 2014, Dragul on behalf of the five Prospect SPEs filed petitions for bankruptcy under chapter 11 of the U.S. Bankruptcy Code (all five cases were consolidated into Case No. 14-10896-EEB, U.S. Bankruptcy Court, District of Colorado).

223. On October 1, 2014, the Prospect SPE debtors filed a motion seeking bankruptcy court approval of a purchase and sale agreement for the sale of the

Prospect Property to Park City Commercial Properties, LLC (“Park City”) for \$16.15 million (the “First Prospect PSA”). *See* Dkt. No. 171 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

224. In connection with the prospective sale of the Prospect Property, the Prospect SPE debtors entered into a stipulation and settlement agreement with the Prospect Lender whereby the Lender agreed to accept a reduced payoff on its loan, which was in default, provided it was paid by December 1, 2014. *See* Dkt. No. 174 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

225. Edward Delava, the managing member and signatory for the Park City purchaser in First Prospect PSA, had been Defendant ACF’s CFO since the 1990’s.

226. Neither the Prospect SPE debtors nor the prospective buyer disclosed the insider relationship among Delava, Fox, and ACF to either the bankruptcy court or the Prospect Lender.

227. The bankruptcy court approved both the settlement agreement with the Prospect Lender and the First Prospect PSA on October 21, 2014. *See* Dkt. No. 182 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

228. On January 5, 2015, the Prospect Lender filed a Motion for Relief from the Automatic Stay seeking to foreclose on the Prospect Property because the sale to Park City had not closed. The Prospect SPE debtors had not provided notice to the bankruptcy court of the failed sale. *See* Dkt. No. 196 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

229. In response to the Prospect Lender's foregoing motion, the Prospect SPE debtors objected to the motion for relief from stay citing extenuating circumstances beyond the debtors' control that had prevented the sale from closing:

After entering into the settlement agreement and a third-party sale agreement that both depended on the current tenant make-up and rental income stream, the anchor tenant Kroger announced its intention to expand and relocate elsewhere. The result was immediate uncertainty as to the future tenant income stream, and the possibility that retail income from the property and associated valuations could drop precipitously. This dramatic turn of events spooked Debtors' buyer and the lending community in the immediate term and will require the Debtors to engage in rehabilitative leasing and tenant improvement efforts related to Kroger space. Until the Debtors have completed such transitional needs, the valuation, sale and financing opportunities for the property are compromised or worse.

See Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 9.

230. Upon information and belief, Dragul and his GDA employees, including Markusch, knew about Kroger's desire to expand and intention not to renew its lease upon its expiration in February 2018 at the time of the First Prospect PSA.

231. Notwithstanding this, Dragul, on behalf of the Prospect SPEs, represented to the bankruptcy court in the objection to the Lender's motion for relief from stay that he had no knowledge of this material fact when the settlement agreement with the Lender and the First Prospect PSA were executed. *See* Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

232. Upon information and belief, the First Prospect PSA was a “stalking-horse” bid from a related party to the ultimate purchaser – the Fox Defendants – both of whom were intimately connected to Dragul and the GDA Entities.

233. The Prospect SPE Debtors contended that Kroger’s decision not to renew its lease, which was set to expire in February 2018, resulted in a significant decrease in the fair market value of the Prospect Property and that finding a suitable replacement anchor tenant would take time and money. *See* Dkt. No. 202 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

234. In February 2015, the parties eventually reached an agreement pursuant to which the Prospect Lender was granted leave from the automatic stay to have a receiver appointed pursuant to its loan documents, among other terms. *See* Dkt. No. 204 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo).

235. On June 30, 2015, the Prospect Lender and the SPE debtors entered into a second settlement agreement, pursuant to which, the Lender agreed to accept a discounted amount of \$12.2 million in satisfaction of the \$12,418,135.53 outstanding balance on its loan. *See* Dkt. No. 230 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

236. On July 2, 2015, the Prospect SPE debtors filed a motion seeking bankruptcy court approval of a second purchase and sale agreement to sell the Prospect Property to ACF at a significantly reduced price of \$12.2 million, \$3.95

million less than the First Prospect PSA (the “Second Prospect PSA”). *See* Dkt. No. 227 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 7.

237. Under the terms of the Second Prospect PSA, the Prospect SPE debtors provided an \$800,000 credit to the buyer (*i.e.* ACF), for “Seller’s reasonable transaction costs,” including *inter alia*, \$350,000 in attorney’s fees to CG. This amount was deducted from the reduced payoff amount agreed to by the Lender. *Id.*

238. Nowhere in the motion seeking bankruptcy court approval of the Second Prospect PSA are the Fox Defendants’ long-standing relationship and business dealings with Dragul and, thus, their status as Insiders as defined in the Bankruptcy Code, disclosed.

239. On July 31, 2015, following ACF’s assignment of the purchase and sale agreement to Fox’s newly created SPE, Prospect Square 15, LLC, the sale of the Prospect Property closed for \$12.2 million. *See Compl. Ex. 18.*

240. A total of \$818,645.61 for “additional charges” was paid at the closing of ACF’s July 31, 2015 purchase of the Prospect Property from the chapter 11 bankruptcy estate:

PAYEE	CATEGORY	AMOUNT
Legal Fees from Escrow:		
Brownstein Hyatt Farber Schreck, LLP	Legal fees	\$164,588.36
Seygarth Shaw LLP	Lender's legal fees	\$26,200.00
Robins Calley Patterson & Tucker	Legal fees	\$18,885.26
Kutner, Brinen, Garber P.C.	Debtors' (sellers) legal fees	\$39,073.99
The Conundrum Group	Legal fees	\$350,000.00
Strauss Troy Co.	Local legal opinion	\$4,600.00
Keating Meuthing & Klekamp	Lender local legal fees	\$1,663.00
Brownstein Hyatt Farber Schreck, LLP	Additional legal fee	\$32,100.00
Legal fees from escrow sub-total		\$637,110.61

PAYEE	CATEGORY	AMOUNT
Other Fees:		
Hanley Investment Group	Consulting services fee	\$110,000.00
Indigo Consulting Services dba Indigo Management Services	Consulting services fee	\$5,500.00
Transpacific Real Estate Consultants	Consulting services fee	\$35,000.00
Global Realty Services Group	Environmental & Phase I Reports	\$2,250.00
The Planning and Zoning Resource Company	Zoning Report	\$985.00
Thomas Graham & Associates	Survey	\$2,800.00
Park City Commercial Properties	Commission	\$25,000.00
Other fees sub-total		\$181,535.00
TOTAL ADDITIONAL CHARGES FROM ESCROW		\$818,645.61

See **Compl. Ex. 18.**

241. Defendant CG received \$350,000 from escrow for a purported “legal fee,” notwithstanding that approximately \$637,110.61 was taken from escrow to pay legal fees to at least five other law firms. See **Compl. Ex. 18.**

242. While the Prospect SPE debtors filed an application to employ the Kahn Defendants, there is no description or statement as to precisely what legal services Kahn would provide to the debtors – “The Debtors desire to employ the services of [the Kahn Defendants] to continue its non-bankruptcy legal services, including general corporate and business matters.” See Dkt. No. 89 (Case No. 14-10896-EEB, U.S. Bankr. Court, D. Colo), at ¶ 10.

243. When the Prospect SPE debtors filed their bankruptcy petitions, the Kahn Defendants held a general unsecured claim of \$27,277.83 for prior legal services. *Id* at ¶ 5.

244. Upon information and belief, the Kahn Defendants did no legal work in connection with the sale of the Prospect property for which legal fees would have been warranted or properly due and owing from the escrowed funds.

245. The initial stalking-horse buyer of the Prospect Property, Park City Commercial Properties, which was owned and managed by ACF's CFO Delava, received a "commission" of \$25,000.00 at closing.

246. Upon information and belief, neither Park City nor Delava were licensed real estate agents entitled to receive such a commission, nor was such commission disclosed to the bankruptcy court.

247. The Prospect Square chapter 11 bankruptcy case was closed on November 4, 2015.

248. On January 22, 2016, nearly six months after the Fox Defendants' purchase of the Prospect Property, through a newly created SPE, PS 16, LLC, Dragul repurchased the Prospect Property for \$13.8 million, giving the Fox Defendants a profit of approximately \$1.6 million for holding the property for less than six months.

See Compl. Ex. 18.

249. At the closing on Dragul's repurchase of the Prospect Property, GDA received \$207,000.00, purportedly to reimburse its "due diligence" expenses and earnest money deposits, CG received \$31,727, again, under the guise of legal fees, and Delava's entity, Park City, received another \$25,000 "commission." *Id.*

250. Dragul's repurchase of the Prospect Property was financed with a new \$12.97 million loan, \$4.335 million from Dragul's institutional investor, Hagshama and \$481,675 in funds ultimately contributed by investors.

251. Even though Dragul's second purchase of the Prospect Property closed in January 2016, beginning in or about February 2016, Dragul and the GDA Entities sent Solicitation Materials to prospective investors seeking investments in GDA PS Member, LLC, a member in PS 16, LLC with 10% interest therein. *See Compl. Ex. 20.*

252. In these Prospect Solicitation Materials, Dragul made the following material misrepresentations to prospective investors:

The 66,846 square foot Kroger store currently does extremely well with sales in excess of \$700 per square foot which equates to well over \$46,000,000 per year. Kroger is currently paying \$7.75 per square foot and their lease expires February 28, 2018. We have received word that they plan to move to a much larger newly developed store across the intersection. The ownership welcomes the opportunity to have Kroger's space back as market rent for this space is upward of \$13.75 per square foot. In fact, the ownership has already received an offer on the space. Furthering the strength of this property is the lack of available commercial land in the submarket limiting competition and allowing an investor to benefit from rising market rental rates.

Compl. Ex. 20, at 1. This was directly contrary to the representations made by Dragul to the Bankruptcy Court which attributed the decreased value of the Prospect to Kroger's departure and the difficulty of finding a replacement tenant. In fact, as of

the date of the Receiver's appointment, Dragul had not identified a replacement tenant or re-leased the Kroger space.

253. In reliance on this misrepresentation, four investors who had received the Prospect Solicitation Materials invested \$555,000 in GDA PS Member, LLC (the "Prospect Investors"). In addition to these investors that contributed cash, Dragul also "gifted" interests in GDA PS Member, LLC to a friend and his three children, Charli, Samuel and Spencer Dragul, who did not actually put money into the deal. See Prospect Investor Detail Chart, attached as **Exhibit 42**.

254. Dragul informed the Prospect Lender in or about January 2018, that he would not be able to pay the \$12.97 million loan he obtained to finance the purchase of the Property, which was due in February 2018.

255. As of the date of the Receiver's appointment, Kroger provided notice of its intent to terminate the lease early and paid \$1.75 million to the Prospect Lender as an early termination fee, which was credited towards the defaulted loan balance.

256. Dragul and the Prospect lender executed a forbearance agreement on January 31, 2018, pursuant to which the lender agreed to forebear exercising its default remedies until May 1, 2018, to allow Dragul time to obtain refinancing.

257. Given his First Indictment, Dragul was unable to refinance the Property, and defaulted on the forbearance agreement by failing to make May, June, July, and August 2018 payments.

258. On November 29, 2018, the Prospect lender instituted a civil action in Ohio state court seeking to foreclose on the Property notwithstanding the stay provisions contained in the Receivership Order.

F. Dragul, Markusch, the Kahn and Fox Defendants' Conduct Designed to Thwart the Receiver's Efforts and Conceal or Impermissibly Transfer Receivership Estate Assets

259. The Receiver could not have discovered these above-detailed misrepresentations made to the GDA Entity Investors prior to August 30, 2018 through reasonable diligence because he did not have access to the GDA books and records, and Dragul refused to produce the SPE books and records to GDA Entity Investors for inspection despite periodic requests.

260. Even after the Receiver was appointed, Dragul and his staff, including Markusch, and the Kahn Defendants concealed documents and information from the Receiver and his counsel and thwarted such efforts to uncover the truth. When requested, Dragul and his staff provided inaccurate or incomplete information to the Receiver.

261. Since approximately 2004, Fox and Dragul owned a Raytheon-Hawker Beechjet 400XP (Serial No. RK-0504, Registration No. N202TT) (the "**Airplane**"). As of the date of the Receiver's appointment, the Airplane was owned by SSC Aviation 06, LLC ("**SSC A 06**"), which in turn was wholly-owned by SSC Aviation 04, LLC ("**SSC A 04**").

262. Pursuant SSC A 04's First Amended Operating Agreement dated April 1, 2011, Dragul and Fox are the sole members holding 66.67% and 33.3% of the membership interests therein, respectively.

263. Dragul was the sole manager of SSC A 06 pursuant to a June 2, 2007 transfer and assignment executed by the prior owner in favor of SS A 04 and Dragul as its sole member and manager.

264. In or about September 2018, shortly after the Receiver's appointment, at a time when the Receiver did not have access to any of the GDA server files, books or records, and was otherwise without access to information regarding this investment, Fox and Dragul represented to the Receiver that the Airplane's value was less than the debt it secured and Fox offered to assume the deficiency on the loan and dispose of the Airplane.

265. At the same time, in September 2018, Fox and Dragul were working with L&L International to market and sell the Airplane, but neither disclosed this to the Receiver.

266. Fox, Kahn and Markusch each had actual knowledge that Dragul was the sole manager of SSC A 06, and therefore, those management rights, and the 66.67% interest in the Airplane were property of the Receivership Estate. Notwithstanding this knowledge, Fox, Kahn and Markusch conspired to create false, back-dated organizational documents for both entities in order to vest control and management rights in Fox so that he could sell the Airplane without the consent or

Receivership Court approval and keep the profits from the sale beyond the reach of the Receiver.

267. Kahn realized in November 2018 that the SSC A 04 and SSC A 06 entities were missing key organizational documents that transferred management rights of SSC A 06 to Fox so he could sell the Airplane without the Receiver's knowledge.

268. In emails with the prospective buyer in November 2018, Kahn on behalf of Fox and Dragul, represented to the prospective buyer that Fox was the manager of SSC A 04 and therefore "ha[d] effective control." In these emails, on which Dragul, Fox and Markusch were copied, Kahn acknowledges that any gap in the organizational documents could normally be fixed with an amendment, but "in this particular instance we are precluded from doing so because of the existing receivership order – which is why Mr. Fox is acting as the Manager for SSC [A] 04."

269. Apparently satisfied with this explanation, the Airplane was sold for \$1.5 million on December 12, 2018.

270. On December 21, 2018, Fox wired \$30,000 to Shelly Dragul's (Dragul's wife), Chase bank account with a memo referencing "Sale of Beechjet." Fox knew the proceeds were property of the Receivership Estate but he conspired with Dragul and Kahn to pay them to Dragul instead of the Estate.

271. In January 2019, following the sale, Kahn, having recognized the entity organization gaps, fraudulently drafted new organizational documents purportedly

to address those gaps and ensure that the Fox Defendants could file a claim against the Receivership Estate for expenses incurred for the Airplane since the Receiver's appointment.

272. On January 23, 2019, Kahn with the assistance of Markusch, drafted and transmitted to Fox, Edward Delava, Eric Diamond (ACF's new CFO), and Dragul, the following SSC A 04 entity documents requesting their signatures:

- a. A First Amended Operating Agreement, fraudulently back-dated to June 2, 2007, adding Fox as a manager of the entity, together with Dragul;
- b. A Second Amended Operating Agreement, fraudulently back-dated to June 14, 2007 to bring the operating documents in conformance with the loan documents and subsequent Colorado Secretary of State filings; and
- c. A Notice of Termination/Dissolution to the Members of SSC A 04 fraudulently back-dated to December 21, 2018, in an effort to resolve two pending lawsuits filed against the entity.

273. The same day, Kahn sent a second set of fraudulent drafted and back-dated organizational documents to the same recipients that addressed the entity organization gaps in SSC A 06:

- a. A Second Amended Operating Agreement, fraudulently back-dated to August 1, 2018, to reflect a change in the Manager from Dragul to Fox.

- b. A Notice of Capital Contributions fraudulently back-dated to August 1, 2018, which Kahn “designed as a forward thinking document” and instructed Fox to insert overestimated expenditures for the fictitious capital call. Kahn added: “This document will become the basis for any SSC [A] 04 equitable claims submission to the Receivership Estate;” and
- c. A Notice of Termination/Dissolution to the Members of SSC A 06 fraudulently back-dated to December 31, 2018 with directions to dissolve the entity “once it resolves any capital contribution or equitable claims efforts, and once SSC 06 has closure.”

274. Kahn fraudulently created and back-dated all of the foregoing entity organization documents for SSC A 04 and SSC A 06 for the express purpose of manufacturing a purported pre-receivership change in management and a capital call entitling the Fox Defendants to submit a false claim against the Receivership Estate for expenses he incurred for the Airplane.

275. Also after the Receiver’s appointment, Fox has systematically refused to produce documents in response to the Receiver’s numerous requests beginning in February 2019 and continuing through the present for documents and records concerning the Estate’s interests in several Fox SPEs, in an effort to conceal Fox and Dragul’s continuing and pervasive fraud in furtherance of Dragul’s Scheme.

276. Upon information and belief, Fox refuses to provide basic, readily-available documents such as detailed financial statements, appraisals, and evidence

of the debt encumbering the properties held by the Fox Entities to further conceal his and Dragul's fraudulent conduct.

277. On June 4, 2019, the Receiver filed a Turnover Motion (the "Dragul Turnover Motion") with the Receivership Court demanding that Dragul turnover various Estate assets he had been concealing and withholding from the Receiver, including those held by SSC 02, LLC ("SSC 02") – an entity purportedly owned by Dragul's children and managed by his wife. The Dragul Turnover Motion asserted that SSC 02 was property of the Estate and that all of its assets must be turned over to the Receiver.

278. Dragul and his family members conceded as much and the Court approved a settlement agreement on December 17, 2019, that required all of SSC 02's assets to be turned over to the Receiver.

279. The Dragul Turnover Motion was served on Fox, his attorneys and ACF's CFO via email on June 4, 2019, because Fox and ACF are purported creditors of the Estate and are therefore entitled to notice of filings therein.

280. SSC 02's assets included membership interests in three Fox Entities – Kenwood Pavilion 14 A, LLC (0.581% interest), Fenton Commons (0.221%), and College Marketplace (0.115%). Both felony charges against Dragul and this Receivership put Dragul in financial distress. Pursuant to their long-standing relationship, Fox agreed to assist Dragul by diverting money owed to the Estate. Notwithstanding his actual notice of the June 4th Dragul Turnover Motion, which

asserted that SSC 02 was property of the Estate, in July 2019, Fox purchased SSC 02's interests in Kenwood, Fenton, and College Marketplace for \$60,000.

281. On January 12, 2019, Dragul told Fox he was in desperate financial condition and asked him for \$1 million as Fox had regularly made personal loans to Dragul disguised as investments for at least the previous 10 years. On April 9, 2019, the Receiver's counsel conferred with Dragul's counsel regarding SSC 02 stating:

we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. . . . Considering this information, *the Receiver retracts any authority previously provided to **sell the storage unit or any other asset owned by SSC 02, LLC.** Further, we need a full accounting of all items in the storage facility as well as the *assets held by SSC 02, LLC, including membership interests in any ACF owned entity as reflected by the attached check.**

See 01/12/19 Dragul and Fox Emails, attached as **Exhibit 43** (emphasis added). A copy of the check referred to in the above-referenced email (attached as **Exhibit 44**) specifically identifies SSC 02's interests in Kenwood, Fenton, and College Marketplace, the very interests Fox paid \$60,000 for three-and-a-half months later.

282. Within minutes of Dragul learning the Receiver was onto SSC 02, Dragul forwarded the Receiver's April 9 email to Fox with the following note: "**Alan, See below. Can we discuss.**" See Email Forwarding Turnover Conferral, attached as **Exhibit 45** (emphasis added). Fox had actual knowledge *on April 9th* that the Receiver was seeking turnover of SSC 02's interests in Kenwood, Fenton, and College

Marketplace. Nevertheless, without the Receiver's knowledge or consent, and without Court approval, Fox paid Dragul \$60,000 for these interests in July 2019.

283. In another transaction taking place in November 2018 and continuing through February 2019, designed to conceal payments to Dragul in violation of the Receivership Order, Fox surreptitiously purchased Dragul's interests in yet another Fox-owned SPE that was property of the Estate.

284. In 2015, Dragul acquired a 7.317% membership interest in the Shoppes at Bedford 15A, LLC (one of the Fox Entities), an interest purportedly then worth \$654,871.50. On November 1, 2015, Dragul "gifted" 50% of his Bedford interest to his friend, lender, and frequent investor Marty Rosenbaum.

285. In November 2018, months after the Receiver was appointed, Rosenbaum agreed to a proposed transaction in which Dragul would secure a \$200,000 loan from Fox with both his and Rosenbaum's 3.6585% Bedford interests. But that transaction apparently did not occur. Instead, Rosenbaum sold his Bedford interest to Fox for \$100,000, which Rosenbaum then funneled to Dragul, and at the same time Fox paid Dragul an additional \$25,000.

286. On November 9, 2018, Fox wired \$25,000 to Dragul's wife Shelly "as a deposit re Bedford LLC Member Interest" with the intention of concealing the funds concealed from the Receiver.

287. On November 15, 2018, Rosenbaum transmitted an executed \$100,000 "promissory note" and membership interest purchase agreement and confirmed in

the email that **“Once I receive the wire . . . I will turn around and wire to Shelly’s account.”**

288. On November 16, 2019, Shelly Dragul received both the \$25,000 wire from Fox in her personal Chase bank account, and the \$100,000 wire from Rosenbaum.

289. Without disclosing the completed November 2018 Rosenbaum transaction to the Receiver, in February 2019, Dragul asked the Receiver to consent to Dragul selling his 3.6585% Bedford interest to Fox for \$20,000, one-fifth what Fox paid Rosenbaum a few months before. GDA’s February 13, 2019, email stated “to get this [Dragul’s Bedford interest] out of the receivership estate, Alan is willing to purchase Gary’s beneficial interest for \$20,000, payable immediately to the estate.” Fox confirmed the offer with the Receiver on March 12, 2019.

290. In March 2019, the Receiver asked Fox for various documents, including tax returns, necessary to value the Estate’s interest in Bedford, and assess the potential tax implications of the proposed purchase to determine whether the transaction was in the Estate’s best interest.

291. The Receiver also had periodic communications with Fox’s CFO on various issues. Fox had actual knowledge that Dragul’s interest in Bedford was property of the Estate and understood that the Receiver needed to approve its sale.

292. Less than one hour after Fox and Dragul once again asked the Receiver to approve Fox’s purchase of Dragul’s Bedford interest, Dragul forwarded Fox a copy

of the Receiver's April 9, 2019, email demanding that SSC 02's interests in Kenwood, Fenton, and College Marketplace be turned over to the Estate. Just like Bedford, Fox knew he could not lawfully purchase the SSC 02 interest without the Receiver's consent and Court approval, but he went ahead and did so anyway.

G. Payment of Unauthorized Commissions

293. According to Dragul's records, from 2003 through August 2018, Dragul, in active concert with the other Defendants, stole over \$20.2 million from investors which was used, *inter alia*, to pay almost \$9 million in personal gambling debts, to impermissibly pay millions to Dragul's family members and the Non-Dragul Defendants, and to fund the extravagant lifestyles of Dragul, his family, coworkers and those Dragul designated as "friends of the house."

294. Various SPEs were used to fraudulently transfer funds to Defendants, including, but not limited to, AP Plaza 07 A, LLC, Fort Collins WF 02, LLC, GDA Clearwater 15, LLC, Crosspointe 08 A, LLC, GDA Hickory 17, LLC, GDA Housing, LLC, GDA PS Member, LLC, GDA Windsor Member, LLC, Grandview 06 A, LLC, HC Shoppes 18 A, LLC, Market at Southpark 09, LLC, Plainfield 09 A, LLC, Plaza Mall North 08 A Junior, LLC, Plaza Mall North 08 B, LLC, Prospect Square 07 A, LLC, Rose, LLC, Southlake 07 A, LLC SSC 02, LLC, Standley Lake 07 A, LLC, Syracuse Property 06 A, LLC, Summit 06, A, LLC, Village Crossroads 09, LLC, Walden 08 A, LLC, West Creek 06 A, LLC, Yale & Monaco 02, LLC and YM Retail 07

A, LLC. These SPEs were funded with money Defendants obtained by defrauding investors.

295. The Receiver’s forensic analysis has been hampered by Dragul’s concealment of records, his use of SPEs to channel funds under the guise of purported “commissions” and other fees to the Defendants, and the vast commingling among the various Dragul accounts. The Receiver reserves the right to recover additional commissions that may be uncovered in discovery and proven at trial.

296. All of the commissions set forth below represent the transfer of funds Defendants obtained by fraud from investors who invested money by purchasing ownership interests in SPEs. These investment vehicles were used to fraudulently transfer funds masked as illegal and undisclosed “commissions” to Dragul, the Kahn Defendants, Markusch, and the Fox and Hershey Defendants.

297. Dragul and the Non-Dragul Defendants paid each other millions of dollars in unauthorized, undisclosed and illegal commissions from the escrow of real estate closings and from the SPE accounts as follows (collectively, the “Commissions”):

Defendant	Commissions from Escrow	Commissions from GDA Entities	Total Commissions Received
Gary Dragul	\$18,822,421.55	\$325,625.55	\$19,148,047.10
Markusch Defendants	\$212,796.67	\$97,300.00	\$310,196.67
Kahn Defendants	\$661,026.87	\$1,040,415.05	\$1,701,441.92
Fox Defendants	\$9,714,804.81	\$485,500.00	\$10,200,304.81
Hershey Defendants	\$578,500.00	\$2,597,155.54	\$3,175,655.54

See **Compl. Exs. 3, 4, 5, 6 (as amended), and 7.**

i. The Dragul and Fox Commissions

298. As detailed and set forth in the chart above, Dragul took millions of dollars in unauthorized, undisclosed, and illegal commissions from the closing and refinance of numerous properties (the “Dragul Commissions”). *See Compl. Ex. 3.* Exhibit 3, which is incorporated herein by reference, sets forth the date, payee, property and amount of each Dragul Commission.

299. From 2002 to 2018, Dragul took approximately \$18.6 million from the escrow of real estate closings (both purchases and sales) of various SPE associated properties both in GDA and ACF’s portfolios, to which neither he nor any GDA Entity was entitled. *See Compl. Ex. 3.*

300. Not only did Dragul fail to disclose these unlawful and unauthorized commissions to investors in the Solicitation Materials, he also failed to disclose, and actually concealed them in the information provided to investors regarding the sale of at least one SPE associated property in which they had invested – PMG.

301. Dragul likewise paid the Fox Defendants over \$9.7 million in “commissions” at the closing on various Dragul properties, and another \$485,500 for purported commissions from the GDA Entities’ bank accounts (the “Fox Commissions”). *See Amd. Ex. 6.* Amended Exhibit 6, which is incorporated herein by reference, sets forth the date, payee, property and amount of each Fox Commission.

302. The Dragul and Fox Commissions were illegal because neither Fox nor Dragul was a licensed real estate agent entitled to receive them.

ii. The Markusch Commissions

303. For her role as CFO and controller of GDA, Markusch received a sizeable salary, not including bonuses and benefits.

304. In addition to her sizeable salary and benefits, the Markusch Defendants also received undisclosed and illegal commissions from the closing on both commercial and residential properties through Juniper and Olson RES, which is the sole member (the “Markusch Commissions”). *See Compl. Ex. 4.* Exhibit 4, which is incorporated herein by reference, sets forth the date, property and amount of each Markusch Commission.

305. From 2014 through 2018, the Markusch Defendants received approximately \$284,796.67 in undisclosed and unlawful commissions from GDA and the SPE entities. *See Ex. 4.*

306. In at least four instances, the Markusch Defendants’ commissions were taken from the closing of various properties in which defrauded investors made investments in reliance on the Solicitation Materials – Rose, LLC, Upper High Street 15, LLC, AP Plaza 07 A, LLC and Summit 06 A, LLC. *See Ex. 4.*

307. Like the Dragul and Fox Commissions, the Markusch Commissions were never disclosed to prospective investors.

308. The Markusch Defendants were not licensed or registered brokers with FINRA, the State of Colorado or the SEC, nor associated with a FINRA or Commission-registered broker-dealer at any time relevant herein.

309. Likewise, upon information and belief the Markusch Defendants are not and have never been a licensed real estate agents in Colorado or any state entitling her to receive commissions from the closing of real estate transactions.

iii. The Hershey Commissions

310. Rather than taking “commissions” from the property closings, the Hershey Defendants received commissions from Dragul separately, all based on an agreed percentage of the funds Dragul received from investors solicited by Hershey.

311. As set forth in the table above, from 2001 to 2014 the Hershey Defendants received approximately \$2,891,155.54 in commissions for funds solicited by Hershey from investors. *See Compl. Ex. 7.* Exhibit 7, which is incorporated herein by reference, sets forth the date, payee, property, and amount of each Hershey Commission.

312. In addition to these commissions, Dragul paid the Hershey Defendants \$194,000 in “commissions” from the sales of properties owned by AP Plaza 07 A, LLC and Grandview 06 A, LLC (collectively referred to as the “Hershey Commissions”). *See Compl. Ex. 7.*

313. The Hershey Defendants were not licensed or registered brokers with FINRA, the State of Colorado or the SEC, nor associated with a FINRA or Commission-registered broker-dealer at any time relevant herein.

**V. FIRST CLAIM FOR RELIEF:
Violations of the Colorado Securities Act
Colo. Rev. Stat. §§ 11-51-501 and 11-51-604(1), (2)(A), (3), and (5)**

314. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

315. The Receiver has standing to prosecute this claim both on behalf of the SPEs and the GDA Entity investors, all of whom are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

***A. Securities Registration Violations, C.R.S. §§ 11-51-604(1) and 11-51-301
(Against Dragul and the Fox Defendants)***

316. As set forth in the preceding paragraphs of this Amended Complaint, Dragul and the Fox Defendants sold securities in this State in violation of C.R.S. § 11-51-301, because between 2003 through August 2018, Dragul and Fox sold securities that were not registered under Article 51 of the Colorado Revised Statutes. C.R.S. § 11-51-604(1).

317. Specifically, Fox's solicitation of and sale to the Southpark Investors from 2009-2010 and to the FC Investors from 2008 through 2019, of membership interests in the specific SPE whose sole asset was real property and whose sole purpose was to own and manage the property, required registration of the securities being sold and Fox failed to do so.

318. Likewise, Dragul's solicitation and sale to the GDA Entity Investors from 2003 through August 2018 of both membership interests in the GDA Entities and of promissory notes (the "Investment Contracts") required that he register the securities being sold, but he failed to do so.

319. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed conduct and transactions prior to August 30, 2018, at the earliest, through reasonable diligence because (1) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

320. The Receiver is therefore entitled to recover damages, interest, costs, and attorneys' fees pursuant to C.R.S. § 11-51-604(1).

B. Licensing and Notice Filing Violations, C.R.S. §§ 11-51-604(2)(a) and 11-51-401 (Against Dragul and the Fox and Hershey Defendants)

321. Dragul and the Hershey Defendants acted as "broker-dealers" as defined in C.R.S. § 11-51-201((2) in the following respects:

- a. Dragul and the Hershey Defendants' solicited and sold of membership interests in Fox-formed SPEs that owned and operated property

including but not limited to Market at Southpark, Loggins Corners, Tower Plaza, Highlands Ranch, Southwest Commons, Meadows Shopping Center, Laveen Ranch and Trophy Club to the GDA Entity Investors from 2009 through 2018 (*See* ¶¶ 5, 41-43, 67, 78, 83, 87-95, 101-102, 145, 148, 145, and 173-175, *supra*);

- b. Dragul and the Hershey Defendants’ solicited and sold promissory notes (Investment Contracts) to the Note Investors from 2008 through August 2013 (*See* ¶¶ 5, 27-28, 64, *supra*).

322. Neither Dragul nor the Hershey Defendants were licensed or exempt from licensure, as either “broker-dealers” or “sales representatives,” nor were they registered in any capacity with the Commissioner as required by C.R.S. §§ 11-51-401 and 402 in violation of C.R.S. § 11-51-401(1). *See* ¶¶ 5, 27-28, and 64, *supra*.

323. Moreover, the Fox Defendants are considered “issuers” under C.R.S. § 11-51-201(10) because they issued securities in the form of SPE membership or joint venture interests in Market at Southpark 09, LLC, Tower Plaza 12, LLC, Loggins Corners 12, LLC, HR 05 A, LLC, Meadows Shopping Center 05 A, LLC, Southwest Commons 05, A, LLC, Laveen Ranch 12, LLC, and Trophy Club 12, LLC to the GDA Entity Investors in this State. *See* ¶¶ 6, 55, 78, 83, 90-142, and 163 – 214, *supra*.

324. The Fox Defendants employed or otherwise engaged Dragul, an unlicensed sales agent to act as sales representative in Colorado in violation of C.R.S. § 11-51-604(2). *See id.*

325. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed conduct and transactions prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

326. As such, the Receiver, on behalf of the defrauded GDA Entity Investors and the Estate, is entitled to an award of damages, interest, costs, and attorneys' fees pursuant to C.R.S. § 11-51-604(2).

C. Securities Fraud in Violation of C.R.S. §§ 11-51-604(3) - (4) and 11-51-501(1)(a)-(c) (against Dragul and the Fox Defendants).

327. Dragul and the Fox Defendants, in connection with the offer, sale, or purchase of securities, directly or indirectly, operated and employed the Sham Business Scheme or artifice to defraud the Southpark Investors, the PMG Investors, the Prospect Investors, the FC Investors, and the other GDA Entity Investors from 2003 through August 2018 (the "Scheme"). C.R.S. § 11-51-501(a). *See*

328. The Scheme effectively defrauded GDA Entity investors and prospective investors by making false and misleading material misrepresentations to induce the

purchase of purported ownership interests in SPEs or joint ventures established by Dragul and the Fox Defendants, which constitute securities under C.R.S. § 11-51-201(17). The GDA Entity investors relied on the representations made both in the Solicitation Materials and directly by Dragul and the Fox and Hershey Defendants in soliciting their investments. The funds ultimately invested by the GDA Entity investors in reliance on Dragul and the Fox and Hershey Defendants' representations were either transferred into Dragul's personal accounts, used to pay undisclosed and illegal commissions, and/or to pay off old debts, without the authority or knowledge of those investors. See ¶¶ 1-8, 34-44, 53-78, 83-89, 90-142, 143-163, 163-124, and 216-258 *supra*.

329. Dragul and the Hershey and Fox Defendants perpetuated this fraud by soliciting investors to purchase membership interests in various SPEs for the stated purpose of purchasing and operating commercial properties. However, Dragul and the Fox and Hershey Defendants did not invest funds where represented, but instead used those funds to pay down other debt and for these Defendants' own personal benefit. *See id.*

330. The above-detailed Scheme was carried out by Dragul and the Fox Defendants from approximately 2003 through August 2018.

331. In connection with the offer, purchase, and sale of securities, including North 08, GDA Market at Southpark, LLC, Fort Collins WF 02, LLC, PS 16, LLC and others, Dragul, and the Fox Defendants, either directly or indirectly, made untrue

statements of material fact or failed to disclose to investors material facts which were necessary to make the statements made to investors, under the circumstances in which they were made, not misleading in violation of C.R.S. § 11-51-501(b) and (c). The omitted and untrue statements of material fact that investors did not know and could not have known included, but were not limited to the following:

- a. Dragul failed to disclose to the GDA Entity Investors that he would sell/assign over 194% of the total membership interests in Plainfield 09 A, LLC and the Plainfield Commons Shopping Center. *See Ex. 22*, at 3; and ¶¶ 60-62 *supra*.
- b. Dragul failed to disclose the actual risk associated with the investments in the GDA Entities and in the Fox-owned SPEs. *See Ex. 22*, at 3; *see also* ¶¶ 78, 83-89, 90-142, 143-163, 163-214, and 216-258, *supra*.
- c. Dragul and the Fox Defendants failed to disclose to the GDA Entity Investors from 2008 through August 2018 the actual financial condition and substantial debt of GDA and Dragul which Fox had actual knowledge by virtue of his demand for periodic budgets and financial information (both personal and SPE) from Dragul. *See Ex. 22*, at 3; *see also* ¶¶ 78, 83-89, 90-142, 143-163, 163-214, and 216-258, *supra*.
- d. Dragul and the Fox Defendants failed to disclose to the FC Investors that they would sell membership interests to family members and insiders at reduced costs and gift membership interests to Dragul

insiders, effectively diluting FC Investor membership interests. *See* ¶¶ 163-214. *supra*

- e. Dragul and the Fox Defendants made untrue statements that that the properties constituting the sole asset of the SPEs in which the investors purchased interests, would be operated with profits derived therefrom being distributed to investors on a monthly basis, when in fact, the GDA Entity Investors distributions were not based on actual performance of the investment, but rather Dragul and the Fox Defendants paid varying amounts of distributions not from the profits, but from extensively comingled funds from other investors, other loans and/or the operations of GDA and ACF, respectively. *See* Second Indictment; and ¶¶ 59, 71-77, 96, 124, 130, 194, and 198, *supra*
- f. Dragul and the Fox Defendants made untrue statements that the GDA Entity Investors' investments and the amount of operating reserves represented in the financial projections included in the Solicitation Materials for Market at Southpark, Loggins Corners, Trophy Club, PMG, Shoppes at the Meadows, Southwest Commons, Laveen Ranch, and Trophy Club were not actually held in the specific Fox SPE or GDA Entity associated bank accounts, but rather were comingled with the funds from all operations of GDA and ACF. *See* **Compl. Exs. 8, 12, 16,**

20 (attached to Original Complaint), and **Exs. 24, 29, 30, 31, 35**; ¶¶ 78, 83-89, 90-142, 143-163, and 163-214, *supra*

- g. Dragul and the Fox Defendants made untrue statements that the proceeds from any sale would be distributed to the GDA Entity Investors in accordance with their *pro rata* share membership interests, when in truth, they failed to disclose to individual investors the sale of various properties before they were sold including the properties associated Highlands Ranch and Market at Southpark in 2011, Loggins Corners in 2018, and Laveen Ranch in 2019, and instead, forced the investors to roll-over their investments into new properties, and in one case, failed to disclose the sale of the PMG property in April 2017 to the PMG Investors and failed to return the PMG Investors' capital consistent with the governing documents. *See* ¶¶ 53-56, 104-113, 118 -140159-161, 180-183, 187-200, 204-211, *supra*
- h. Dragul's and the Fox Defendants made untrue statements that the funds invested by the GDA Entity Investors in the Market at Southpark from 2009-2010, PMG from 2008-2016, FC WF 02 from 2008-2012, Prospect Square 2007-2016, and other SPE-owned properties would not be comingled with the funds of other investors in unrelated ventures and/or with Dragul's own personal funds, when in truth they were comingled and treated as fungible rather than being used for the

purpose that Dragul and Fox represented they would be used in the Solicitation Materials as set forth in **Exhibits 8, 12, 16, 20** (attached to Original Complaint), and **Exhibits 24, 29, 30, 31, 32, 36, 39**, and (attached hereto), and in paragraphs ¶¶ 78, 83-89, 90-142, 143-163, and 163-214, above.

- i. The Fox Defendants made untrue statements that the GDA Entity Investor funds invested the Market at Southpark from 2009-2020, FC WF 02 from 2008-2020, and other SPE-owned properties would not be commingled with the funds of other investors in unrelated ACF ventures and/or with the funds of other investors in unrelated ventures and/or with Dragul's own personal funds, when in truth they were commingled and treated as fungible rather than being used for the purpose that Dragul and Fox represented they would be used in the Solicitation Materials as set forth in **Exhibits 8, 12, 16, 20** (attached to Original Complaint), and **Exhibits 29, 30, 36, and 39** (attached hereto), and in paragraphs 78, 90-142, and 163-214, above;
- j. Dragul and the Fox Defendants failed to disclose that they offered and sold interests in the SPEs which owned the property at a reduced rate or in some instances, for no consideration, thereby diluting the GDA Entity Investor's investments as set forth in paragraphs 63, 103, 125, 128, 156, and 179, above.

- k. Dragul and the Fox Defendants failed to disclose to the Southpark Investors, the FC Investors, the PMG Investors, the Prospect Investors, and other GDA Entity Investors that the investment funds contributed in reliance on the Solicitation Materials prepared and distributed by Dragul and the Fox and Hershey Defendants between 2009 through 2018 would be used to improperly pay commissions to these Defendants and other Non-Dragul Defendants in the amounts and on the dates set forth in Compl. Ex. 3, 4, 5, 6 (as amended), and 7. *See also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, 293-313;
- l. Dragul and the Fox Defendants made untrue statements from 2008 through 2018 to the Southpark Investors, the FC Investors, the PMG Investors, the Prospect Investors, and other GDA Entity Investors concerning the purchase price of various properties, their closing costs, and the financial projections in the Solicitation Materials for the investments, including but not limited to those detailed in paragraphs 62, 83-89, 90-100, 104, 121-132, 143-150, 155-156, 172-175, 190-211, 219-221, 251-253, 299-300, *supra*, on the dates stated therein;
- m. Dragul and the Fox Defendants made untrue statements in the Loggins Corners, Tower Plaza, Trophy Club, and Laveen Ranch Solicitation Materials following the unauthorized sale of the real estate owned by

the SPEs including but not limited to those set forth and described in detail in paragraphs 53-56, 104-113, 118 -140159-161, 180-183, 187-200, and 204-211, above, in order to induce their consent to sell the sole asset of the SPE in which they invested and to induce roll-over investments into the replacement properties;

- n. The Fox Defendants' failed to disclose that Fox would misappropriate a substantial amount of property equity from escrow of Laveen Ranch and Loggins Corners when he refinanced those properties in 2016, which was money that he represented would be, and which should have been, paid to the Southpark Investors. *See* ¶¶ 133-134 and 201-203 *supra*.
- o. Dragul and the Fox Defendants' made untrue statements to the Southpark Investors, FC Investors, Prospect Investors, and other GDA Entity Investors between 2009 through 2018 that that they could not cash out their investments including but not limited to those set forth in paragraphs 60-62, 177-178, 183-189, and 200, above, when the respective Solicitation Materials, Membership Interest Purchase Agreements, or the governing entity documents did not require the investments to be held for any specific number of years. *See id.*
- p. Dragul and the Fox Defendants failed to disclose that they would engage in a course of business which diluted the value of membership interests including Dragul's gifting of membership interests in FC WF 02 in or

about 2008 to insiders and Fox's sale of Market at Southpark interests at varying prices to members of his family in 2009. *See* Second Indictment; and ¶¶ 63, 103, 125, 128, 156, and 179, *supra*

332. The Scheme was also employed through Dragul's offering of promissory notes (Investment Contracts) from 2007 through 2013 pursuant to which he raised \$6.4 million from more than thirty-one individual investors all of whom are identified in the First Indictment (the "Note Investors"). *See* First Indictment; and ¶¶ 57, 63-65, and 155-156, *supra*.

333. The promissory notes issued by Dragul constitute securities pursuant to C.R.S. § 11-51-201(17).

334. In soliciting the promissory notes (Investment Contracts), Dragul made material, untrue statements and omissions of material facts, including but not limited to:

- a. Failing to disclose the actual risk associated with the investments;
- b. Failing to disclose to the Note Investors that GDA had negative equity of over \$8.5 million, including over \$4 million in unpaid, overdue promissory notes issued in 2007 and 2008;
- c. Failing to disclose to the Note Investors that Dragul and GDA were named as defendants in numerous civil lawsuits brought by Note Investors for failing to timely repay promissory notes issued prior to 2013.

- d. Failing to disclose to the Note Investors that Dragul was using the funds from the notes to pay personal expenses, including but not limited to repayment of personal loans to Fox, millions of dollars in payments to Las Vegas Casinos, maintenance and upkeep costs for the Airplane owned by Dragul and Fox, renovations on his former home, payments to credit card companies, and liquor stores that he and his wife purportedly owned; and
- e. Failing to disclose that he would selectively repay the Note Investors - paying insiders and “friends of the house” or rolling their unpaid notes (Investment Contracts) into an SPE investment while defaulting on all others.

See Ex. 22.

335. Dragul and Fox recklessly, knowingly, and with the intent to defraud employed the Scheme from 2003 through August 2018.

336. Neither the Receiver nor the GDA Entity Investors could have discovered the above-detailed material misrepresentations and omissions made to the GDA Entity Investors prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted

GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

337. The GDA Entity Investors reasonably relied on the above-detailed material misrepresentations and omissions made by Dragul and the Fox Defendants, who knew or should have known of their reliance, to their detriment.

338. As a direct and proximate result of Dragul and the Fox Defendants' Scheme from 2003 through August 2018 in violation of C.R.S. §§ 11-51-501 and 11-51-604(3) and (4), the GDA Entity Investors and the Estate, on whose behalf the Receiver asserts these claims, have been damaged in an amount to be shown at trial.

D. Control Person Liability, C.R.S. § 11-51-604(5)(a) and (b) (against Dragul and Fox)

339. In carrying out the Scheme as set forth herein, Dragul acted as a direct control person of the Non-Dragul Defendants and Fox as a control person of Dragul within the meaning to C.R.S. § 11-51-604(5)(a).

340. At all times relevant herein, both Fox and Dragul are considered issuers as defined in C.R.S. § 11-51-201(10).

341. By virtue of his ownership of, high level position in, and participation in and/or awareness of the operations of GDA RES, GDA REM, and the GDA Entities on whose behalf Hershey acted as a contract consultant in soliciting investments, Markusch who served as CFO of GDA RES, and Kahn who served as outside general

Counsel for GDA RES, GDA REM and the GDA Entities, Dragul had the power to influence the control and did influence the control, directly or indirectly, the decision-making of the Hershey and Kahn Defendants and Markusch including the distribution and making of false and misleading statements and in the material omissions contained in the Solicitation Materials and in untrue statements.

342. Likewise, by virtue of his role as Dragul's mentor, business partner-lender, use of the GDA employees for ACF operations, and his, participation in and/or awareness of the daily operations of GDA RES, GDA REM, and the GDA Entities, Fox had the power to influence and control and did influence and control, directly or indirectly, over the decision-making of Dragul, including the distribution and making of false and misleading statements to prospective investors and in the material omissions contained in the Solicitation Materials.

343. Both Dragul and Fox had direct and supervisory involvement in the day-to-day operations of GDA RES, GDA REM and the GDA Entities, and therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein and exercised same.

344. As such, Fox and Dragul are jointly and severally liable pursuant to C.R.S. § 11-51-604(5)(a) and (b).

E. Substantial Assistance Claims, C.R.S. § 11-51-604(5)(c) (Against the Kahn Defendants, the Fox Defendants, the Hershey Defendants, Markusch)

345. As alleged in the preceding paragraphs, Dragul and the Fox Defendants recklessly, knowingly, and/or with the intent to defraud the GDA Entity Investors and the Note Investors, sold securities – *i.e.*, the membership interests in Dragul and Fox-formed SPEs or joint ventures and promissory notes, in violation of C.R.S. § 11-51-501. *See* § V.C, *supra*.

346. Dragul and the Fox Defendants offered and sold securities by means of untrue statements of material fact or omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading (the Investors not knowing of the untruths or omissions). *Id.*

347. Markusch, and the Kahn and Hershey Defendants knew or had reason to know that Dragul and the Fox Defendants, engaged in conduct which constituted violations of C.R.S. § 11-51-604(3) and (4) through the operation of the Scheme, pursuant to which all Defendants received substantial unauthorized and undisclosed commissions both from escrow of the properties owned by the various SPEs, and from their respective bank accounts in which investor funds and reserves were to be held and maintained for the benefit of the GDA Entity Investors.

348. The Hershey Defendants' provided substantial assistant to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

- a. The solicitation of investors in the GDA Entities since approximately 2001;
- b. Their receipt of unauthorized and undisclosed commissions in the amount of \$3,175,655.54 for each investment successfully solicited and promissory note sold on Dragul's behalf from 2001-2013; and
- c. Other acts which may be shown at trial.

349. The Fox Defendants' provided substantial assistance to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

- a. The sharing in misappropriated investor funds from the purchase, refinance, and sale of properties in which the GDA Entity Investors were members;
- b. Making material misstatements to the GDA Entity Investors to induce their investment in both Fox and Dragul formed and controlled SPEs;
- c. Their receipt of unauthorized and undisclosed commissions in the amount of \$10,200,304.81 from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2002-2018; and
- d. Other acts which may be shown at trial.

350. The Kahn Defendants provided substantial assistance to the illegal conduct of Dragul and the Fox Defendants pursuant to C.R.S. § 11-51-604(3) and (4) by:

- a. Providing counsel and advice to Dragul with respect to the unauthorized and undisclosed sale of PMG and concealment from the PMG Investors in or about 2017 and 2018;
- b. Aiding and facilitating Dragul's and the Fox Defendants' violations of the Receivership Order to transfer and sell Estate Assets without the Receiver's knowledge and consent from August 2018 through the present;
- c. Their receipt of \$1,701,441.92 in unauthorized and undisclosed commissions from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2012-2018; and
- d. Other acts which may be shown at trial.

351. Markusch provided substantial assistance to the illegal conduct of Dragul pursuant to C.R.S. § 11-51-604(3) and (4) through:

- a. Her actions undertaken in her capacity as CFO of GDA, specifically the extensive comingling of funds that were required to be held in particular GDA Entity accounts in order to perpetrate Dragul's Ponzi Scheme and prevent its detection;
- b. Her receipt of \$310,196.67 in unauthorized and undisclosed commissions from both the escrow of properties purchased and sold by the Fox SPEs and the GDA Entities from 2014-2018; and
- c. Other acts which may be shown at trial.

352. The acts, actions, practices and omissions of all Defendants as set forth in this claim for relief substantially harmed the GDA Entity Investors and the Estate.

353. Neither the Receiver nor the GDA Entity Investors could have discovered these material misstatements and omissions made in connection with the sale of securities prior to August 30, 2018, at the earliest, through reasonable diligence because (a) the Receiver did not have access to the GDA books and records before that date as Dragul and GDA were not yet subject to a receivership, (b) Dragul and the Fox Defendants refused to produce the SPE books to the GDA Entity Investors on numerous occasions; and (c) the manner in which Dragul conducted GDA's business was designed to conceal or hide the facts of his fraud, theft, and material misrepresentations and omissions. Moreover, upon information and belief, Dragul destroyed or deleted data, information, documents, and other electronically stored information prior to the Receiver's appointment.

354. Accordingly, Markusch, and the Kahn and Hershey Defendants are therefore jointly and severally liable to the same extent as Dragul and the Fox Defendants to the Receiver, who pursues these claims on behalf of and for the GDA Entity Investors and the Estate, pursuant to C.R.S. § 11-51-604(5)(c).

VI. SECOND CLAIM FOR RELIEF:
Negligence
(against Dragul and the Fox and Hershey Defendants)

355. The Receiver incorporates the previous allegations of the Complaint as if fully set forth herein.

356. The Receiver has standing to prosecute these claims both on behalf of the SPEs and on behalf of the GDA Entity investors, all of whom are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

357. Dragul, the Fox and the Hershey Defendants each owed a duty of care to investors and prospective investors.

358. These defendants failed to exercise reasonable care or competence in preparing and distributing Solicitation Materials to prospective GDA Entity investors and in making representations to investors.

359. These defendants' negligence was a cause of Plaintiff's injuries and injuries to investors.

**VII. THIRD CLAIM FOR RELIEF:
Negligent Misrepresentation
(Against Dragul and the Fox and Hershey Defendants)**

360. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

361. The Receiver has standing to prosecute these claims on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

362. Through Dragul's fraudulent Scheme, Dragul and the Fox and Hershey Defendants negligently induced the GDA Entity investors to invest and/or to continue to invest (through roll-overs of prior investment) significant sums of money in various

SPE Entities by making misrepresentations of material fact concerning the investments.

363. More specifically, Dragul, and the Fox and Hershey Defendants made false and misleading material misrepresentations concerning the source and use of funds to induce investors and prospective investors to purchase purported ownership interests in SPEs, including but not limited to those set forth in ¶¶ 53-56, 59, 62, 71-77, 78, 83-89, 90-100, 104, 121-132, 143-150, 155-156, 172-175, 190-211, 219-221, 251-253, 299-300, above.

364. These Defendants gave such information to investors in the course of their business and in connection with transactions in which they had a financial interest.

365. These Defendants gave the false and misleading information to investors for the investors' use in business transactions, and these Defendants were negligent in obtaining or communicating the information.

366. The GDA Entity investors relied on the representations made both in the Solicitation Materials and directly by Dragul and the Fox and Hershey Defendants in soliciting their investments. The funds ultimately invested by the GDA Entity investors in reliance on these Defendants' representations were either transferred into Dragul's personal accounts, used to pay undisclosed and illegal commissions, and/or to pay off old debts, without the authority or knowledge of those investors. *See Compl. Exs. 3, 4, 5, 6 (as amended), and 7; see also ¶¶ 5-7, 22, 27,*

42, 59, 62, 71-77, 82, 87, 89-142, 143-149, 155-156, 168, 170-171, 173-175, 180, 191-194, 198, 201-203, 211-213, and 293-313, *supra*.

367. The negligent misrepresentations made by Dragul and the Fox and Hershey Defendants were material and were made without reasonable care for the guidance of others, namely the GDA Entity investors.

368. Dragul and the Fox and Hershey Defendants provided materially misleading information or omitted disclosure of material information, intending or knowing GDA investors would reasonably rely upon those negligent misrepresentations in investing in the SPE entities. *See* ¶¶ 5-7, 22, 27, 42, 53-56, 59, 62, 71- 77, 78, 83-142, 143-150, 155-156, 168, 170-171, 172-178, 181-211, 190-211, 219-221, 251-253, 299-300, *supra*.

369. GDA Entity investors reasonably and justifiably relied upon the negligent misrepresentations of Dragul, and the Hershey and Fox Defendants in making their decision to invest in the GDA Entities.

370. As a direct and proximate cause of their reliance on Dragul and the Fox and Hershey Defendants' negligent misrepresentations, the GDA Entity investors sustained substantial damages and losses.

**VIII. FOURTH CLAIM FOR RELIEF:
Civil Theft – Colo. Rev. Stat. § 18-4-401
(Against All Defendants)**

371. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

372. The Receiver has standing to prosecute these claims on behalf of the Estate, the SPEs, and on behalf of the GDA Entity Investors, the latter of which are creditors of the Receivership Estate. See **Compl. Ex. 1**, at ¶ 13(s).

373. Defendants knowingly exercised control over GDA Entity investors' funds.

374. Without investors' knowledge or authorization, Defendants exploited their control over those funds by causing them to be used for Defendants' personal benefit. See ¶¶ 1-4, 1-8, 34-44, 47-49, 50-78, 87, 89, 96, 124, 130, 194, 198, 220, and 293-313, *supra*.

375. Defendants intended to permanently deprive investors of their investments.

376. GDA Entity investors were in fact permanently deprived of their funds.

377. GDA Entity investors have been damaged by Defendants' theft in an amount to be proven at trial and are therefore entitled to treble damages, costs, and reasonable attorney's fees.

**IX. FIFTH CLAIM FOR RELIEF:
Violations of the Colorado Organized Crime Control Act ("COCCA")
Colo. Rev. Stat. § 18-17-101, et seq.
(*Dragul, the Fox Defendants, and the Hershey Defendants*)**

378. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

379. The Receiver has standing to prosecute these claims both on behalf of Estate, the SPEs, and on behalf of the GDA Entity Investors, the latter of which creditors of the Receivership Estate. *See* Compl. **Ex. 1**, at ¶ 13(s).

380. At all relevant times, Dragul, the Fox and the Hershey Defendants were considered “persons” within the meaning of the Colorado Organized Crime Control Act (“COCCA”), C.R.S. § 18-17-103(4).

381. At all relevant times, the Estate, SPEs, and GDA Entity Investors were considered “persons” aggrieved or injured within the meaning of COCCA, C.R.S. §§ 18-17-106(6) and (7).

382. At all relevant times, Dragul, the Fox and Hershey Defendants, formed an association-in-fact for the purpose of defrauding the Estate and GDA Entity Investors and prospective investors. *See* ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-309, *supra*.

383. As described in detail in this Amended Complaint, Dragul and Fox employed a sham business, the Scheme, with the substantial assistance of Hershey, Kahn and Markusch, which included distribution of Solicitation Materials containing false and misleading statements and material omissions in order to solicit investors to purchase membership interests in various SPEs and in Dragul’s sale of promissory notes. Hershey directly assisted in this Scheme by soliciting numerous investors to purchase both SPE membership interests as well as promissory notes. For each investment made that Hershey solicited, Dragul would pay him a percentage, usually

equal to 10%. Contrary to the representations made to convince investors to buy into any given deal, Dragul and Fox did not, invest those funds where the investors intended them to be invested and instead used those funds to pay down other debt, to pay distributions to other investors in other Dragul or Fox deals, and/or for Dragul and Fox's own personal benefit. Dragul and Fox trapped investors in deals in which they had the right to cash out, in order to keep their operation and Scheme running from 2002 through August 2018 as set forth in detail ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above.

384. This association-in-fact of Dragul, Fox, Hershey in carrying out the Scheme set forth in detail herein constitutes an “enterprise” within the meaning of COCCA, C.R.S. § 18-17-103(2).

385. Dragul, and the Fox and Hershey Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a “pattern of racketeering activity” within the meaning of COCCA, C.R.S. § 18-17-103(3), in violation of COCCA, C.R.S. § 18-17-104(3) to further their Scheme and plans related thereto, and where all such schemes, devices, and actions were related to the conduct and in furtherance of their enterprise.

386. Specifically, as alleged herein, these Defendants committed at least two, related predicate acts of as set forth below in accordance with C.R.S. § 18-17-103:

- a. Violations of the Colorado Securities Act, under C.R.S. § 11-51-401 (Dragul and the Hershey Defendants); C.R.S. § 11-51-301 (Dragul and

the Fox Defendants); C.R.S. § 11-51-501(1) (Dragul and the Fox Defendants). *See* C.R.S. § 18-17-103(b)(XIII).

- b. Wire fraud, under 18 U.S.C. § 1343; civil theft under C.R.S. § 18-4-401; and/or at least two predicate acts of bankruptcy fraud under 18 U.S.C. § 157. Each of these crimes are incorporated into COCCA by C.R.S. § 18-17-103(5). *See* C.R.S. § 18-17-103(a).

387. As stated in the preceding allegations of this Amended Complaint, the Dragul, and the Fox, Hershey Defendants directly participated in the affairs of the enterprise and committed a pattern of racketeering in the following non-exclusive respects:

- a. Dragul and the Fox Defendants violated the Colorado Securities Act when from 2006 through 2018, in connection with the offer, sale, or purchase of securities, they employed a devise, scheme, or artifice to defraud the GDA Entity investors, the Estate's creditors and other parties in interest. As set forth above, Dragul, the Hershey and the Fox Defendants provided false and misleading Solicitation Materials to prospective investors to induce investments in SPEs owned and controlled by Dragul and/or the Fox Defendants. Additionally, all Defendants received illegal and undisclosed commissions from the sales of properties and/or the SPE accounts. The Scheme involved the investment of money in a common enterprise with profits that were

wrongfully derived from GDA Entity investors, the Estate's creditors and other parties in interest. C.R.S. §§ 11-21-501(1) and 11-51-604. *See* § V. A. – E., First Claim for Relief, at ¶¶314-354, *supra*.

- b. Dragul, the Fox and Hershey Defendants committed wire fraud under 18 U.S.C. § 1343 from 2006 through 2018, when they knowingly devised or intended to devise a Scheme to defraud and to obtain money from investors under false pretenses, representations and promises, including material misrepresentations and omissions in the Solicitation Materials concerning the investment, payment of illegal and undisclosed commissions, and improper comingling and misappropriation of GDA Entity Investor funds. Defendants used interstate or foreign wire communications to carry out the Scheme with the intent to defraud and obtain money through false pretenses, misrepresentations or promises, which in fact deprived innocent investors of their money. This Scheme was reasonably calculated to deceive persons of ordinary prudence or comprehension. *See* **Compl. Exs. 3, 4, 5, 6 (as amended), 7, 8, 16, 20, 24, 29, 30,31, 32, 36, and 39;** *see also* ¶¶ 5-7, 22, 27, 42, 59, 62, 71-77, 82, 87, 89-142, 143-149, 155-156, 168, 170-171, 173-175, 180, 191-194, 198, 201-203, 211-213, and 293-313, *supra*.

- c. Dragul, the Fox and Hershey Defendants committed theft under C.R.S. § 18-4-401, and thus engaged in racketeering activity from 2006 through 2018 when each of them knowingly and without authorization took illegal and undisclosed commissions from escrow upon the purchase or sale of various SPE properties and the comingled GDA Entity bank accounts, through deceptive and material misstatements. Defendants intended to permanently deprive the GDA Entity investors of such funds, notwithstanding that such funds were property of the GDA Entity investors. *See Compl. Exs. 3, 4, 5, 6* (as amended), and *7*; *see also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.
- d. Dragul and the Fox Defendants committed bankruptcy fraud under 18 U.S.C. § 152(5) and (8), and thus, engaged in racketeering activity. First, the Fox Defendants knowingly received a material amount of property from the Prospect Debtor after the petition date with the intent to defeat the provisions of title 11. Next, by intentionally devising a scheme or plan to defraud the Prospect SPEs' creditors through false and misleading representations and omissions to the bankruptcy court and the Prospect SPEs' creditors regarding the sale of the Prospect Property. Next, Dragul knowingly and fraudulently concealed, destroyed,

falsified, and/or made false entries in recorded information, including the Prospect Debtor's books, documents, records, and papers relating to the property and financial affairs of the Debtor. The Prospect Debtors' declaration of bankruptcy served as the tool to execute a fraudulent scheme that was designed to and did defraud innocent GDA Entity Investors. *See* ¶¶ 216-258, *supra*.

388. These acts of racketeering, which occurred within ten years of each another, are related and constitute a "pattern of racketeering activity" per C.R.S. § 18-17-103(3).

389. The above acts committed as part of the scheme to defraud investors, the Estate's creditors and interested parties, were related to each other by virtue of common participants, a common class of victims, a common method of commission (solicitation of investments based on false representations), and the common purpose and common result was to defraud GDA Entity investors, to the benefit of Defendants.

390. It is unlawful for any person employed by or associated with an enterprise to conduct the affairs of an enterprise through a pattern of racketeering, or for any person to conspire or endeavor to commit a violation of COCCA, C.R.S. §§ 18-17-104(3) and (4).

391. As a direct and proximate result of Defendants' COCCA violations, Defendants pilfered the SPEs thereby damaging the GDA Entities, their investors,

the Estate and its creditors, who are entitled to treble damages, costs, and reasonable attorney's fees pursuant to C.R.S. § 18-17-106(7).

**X. SIXTH CLAIM FOR RELIEF:
Aiding and Abetting Violations of COCCA
Colo. Rev. Stat. § 18-17-101 *et seq.*
(*Against Markusch, and the Kahn, Fox, and Hershey Defendants*)**

392. The Receiver realleges and incorporates by reference the previous allegations of the Amended Complaint as if fully set forth herein.

393. The Receiver has standing to prosecute these claims both on behalf of the Estate, the GDA Entities, and on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

394. At all relevant times, the Non-Dragul Defendants were “persons” within the meaning COCCA, C.R.S. §§ 18-17-103(4).

395. At all relevant times, the GDA Entity Investors, the Receivership Estate's creditors and parties in interest, were considered “persons” aggrieved or injured within the meaning of COCCA, C.R.S. §§ 18-17-106(6) and (7).

396. At all relevant times, Non-Dragul Defendants knowingly participated in the enterprise which was an association-in-fact designed to defraud GDA Entity Investors, the Estate's creditors and other parties in interest, while enriching all Defendants as evidenced by the following:

- a. All Defendants' receipt of undisclosed and unauthorized commissions from escrow of the properties owned by the associated SPE in which investors purchased membership interests. *See Compl. Exs. 3, 4, 5, 6*

(as amended), and **7**; *see also* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.

- b. The Fox Defendants’ actual knowledge of and participation in the Scheme as Dragul’s mentor and business partner, purchasing Estate assets without the Receiver’s knowledge or consent in violation of the Receivership Order, improperly withholding GDA Entity Investor distributions and entity organizational documents; falsifying organizational documents to transfer control and management rights post-receivership in order to sell the Airplane, Fox’s dilution of the GDA Entities’ purchased membership interests, Fox’s payment of funds to Dragul for the Estate’s membership interest in Fox Entities held through SSC 02, and other conduct as alleged herein. *See* ¶¶ 6, 22-23, 36-38, 59, 63, 71-77, 87, 89, 96, 103, 124-125, 128, 130, 156, 179, 194, 198, 212-214, 261-247, 275-284, 285-291, and 298-302, *supra*.

397. This association-in-fact was an “enterprise” within the meaning of COCCA, C.R.S. § 18-17-103(2). *See* ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, *supra*.

398. The Non-Dragul Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of COCCA, C.R.S. § 18-17-103(3), in violation of COCCA,

C.R.S. § 18-17-104(3) to further the fraudulent scheme set forth herein and plans related thereto, and where all such schemes, devices, and actions were related to the conduct and in furtherance of their enterprise. *See id.*

399. Specifically, at all relevant times, the Non-Dragul Defendants, through aiding and abetting and the provision of substantial assistance to Dragul, engaged in racketeering within the meaning of C.R.S. § 18-17-103(5), when they conspired to commit and did commit violations of the Colorado Securities Act, under C.R.S. §§ 11-21-501(1) and 11-51-604; wire fraud, under 18 U.S.C. § 1343; theft under C.R.S. § 18-4-401; and/or bankruptcy fraud under 18 U.S.C. § 157.

400. The Non-Dragul Defendants participated in the affairs of the enterprise and committed a pattern of racketeering including but not limited to those set forth in ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above., above.

401. These detailed acts of racketeering occurred within ten years of one another and constitute a pattern of racketeering activity within the meaning of C.R.S. § 18-17-103(3).

402. The above-detailed acts committed as part of Dragul's fraudulent scheme were related to each other by virtue of common participants, a common class of victims (*i.e.*, the GDA Entity investors, the Estate's creditors and other parties in interest), a common method of commission (several years' worth of unauthorized transfers of investor funds for Non-Dragul Defendants' Defendants' use and benefit),

and the common purpose and common result was to defraud the GDA Entity investors, and the Estate's creditors, to the benefit of Defendants.

403. It is unlawful for any person employed by or associated with an enterprise to conduct the affairs of an enterprise through a pattern of racketeering, or for any person to conspire or endeavor to commit a violation of COCCA, C.R.S. §§ 18-17-104(3) and (4).

404. In violation of C.R.S. § 18-17-104(3), the Non-Dragul Defendants conspired with and endeavored to violate the provisions of COCCA, C.R.S. § 18-17-104(3), by aiding and abetting Dragul as described in ¶¶ 1-4, 34-44, 47-52, 53-78, 83-89, 90-142, 143-163, 163-214, 216-258, 261-247, 277-291, and 303-313, above.

405. As set forth above, the Non-Dragul Defendants and Dragul conspired with the common purpose of fraudulently, illegally, and without authorization, misappropriating funds through a series of fraudulent representations, inducements, transactions, and wire transfers among and between the GDA Entity bank accounts, the Non-Dragul Defendants' personal bank accounts, and title company escrow accounts. *Id.*

406. Through their fraudulent Scheme, the Non-Dragul Defendants and Dragul pilfered the SPEs for their own benefit and thus, have injured the GDA Entity investors and the Receivership Estate, including its creditors and parties in interest.

407. As a direct and proximate result of the Non-Dragul Defendants' aiding and abetting, participating in, and conspiring with Dragul to violate COCCA, C.R.S.

§ 18-17-104(3), the SPEs and thus, the GDA Entity investors and the Estate, including its creditors and parties in interest, have been damaged and are therefore entitled to treble damages, costs, and reasonable attorney's fees to C.R.S. § 18-17-106(7).

**XI. SEVENTH CLAIM FOR RELIEF:
Breach of Fiduciary Duty
(Against Dragul)**

408. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

409. As manager of the GDA Entities, Dragul a fiduciary duty to the GDA Entities and their member investors, which required him to use reasonable care and skill in managing the properties and associated SPEs.

410. Dragul also owed a fiduciary duty to the GDA Entity investors to ensure the truth and accuracy of the representations made prior to and during the GDA Entities' ownership of the associated properties and to ensure that those representations remained true throughout the ownership of the properties.

411. Dragul breached his fiduciary duties as set forth above, and in the following non-exclusive respects, as set forth in ¶¶ 104, 33-44, 53-78, 83-89, 91-95, 97-102, 104, 106-142, 143-160, 171-214, 215-258, 259-260, 293-313, above:

412. Failing to provide honest and accurate material information to the investors prior to and during ownership of the associated properties;

413. Failing to disclose that he and the Non-Dragul Defendants received illegal and unauthorized Commissions from escrow of the sale of SPE properties and from the SPE accounts;

414. Receiving undisclosed and unearned commissions and/or payments from escrow of closing on the sale of certain SPE properties and from the SPE accounts;

415. Placing his own and the Non-Dragul Defendants' financial interests above the GDA Entities and their investors;

416. Failing to act in the best interest of the GDA Entities and instead placing his own interests and the Non-Dragul Defendants' interests above those of the GDA Entities; and

417. Other acts or omissions which may be identified through discovery and shown at trial.

418. Dragul's acts or omissions as described in the allegations and claims for relief set forth herein constituted breaches of the fiduciary duties he owed to the GDA Entities and their member investors, and were intentional, willful, and wanton.

419. Dragul's actions or omissions were intentionally designed to enrich himself to the detriment of the GDA Entities and their member investors, and were intentionally designed to conceal material information from the GDA Entity investors, all to their detriment.

420. As a proximate cause of the Dragul's breaches of his fiduciary duties, the Estate suffered damages and losses.

**XII. EIGHTH CLAIM FOR RELIEF:
Aiding and Abetting Dragul's Breach of Fiduciary Duties
(Against the Kahn Defendants)**

421. The Receiver realleges and incorporates by reference the previous allegations of the Amended Complaint as if fully set forth herein.

422. The Receiver has standing to prosecute these claims both on behalf of the Estate, the GDA Entities, and on behalf of the GDA Entity investors, the latter of which are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

423. The Kahn Defendants, in their capacity as counsel for the GDA Entities, aided and abetted Dragul's breach of the fiduciary duties he owed to the GDA Entities and their member investors for the purpose of advancing their own interests over those of the GDA Entities and their investors.

424. As set forth above, the Kahn Defendants obtained direct financial benefits from colluding in or aiding and abetting Dragul's breaches.

425. As a direct and proximate result of the Kahn Defendants' aiding and abetting, participating in, and conspiring with Dragul to breach the fiduciary duties that he owed to the GDA Entities and their member investors, the SPEs and thus, the GDA Entity investors and the Estate, including its creditors and parties in interest, have been damaged.

**XIII. NINTH CLAIM FOR RELIEF:
Negligence
(Against the Kahn Defendants)**

426. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

427. The Receiver has standing to prosecute these claims on behalf of the SPEs all of whom are creditors of the Receivership Estate. *See Compl. Ex. 1*, at ¶ 13(s).

428. The Kahn Defendants represented the GDA Entities, which included handling general representation and litigation matters for each of the GDA Entities.

429. In doing so, the Kahn Defendants owed the GDA Entities a duty to employ that degree of knowledge, skill, and judgment ordinarily possessed by members of the legal profession in carrying out services for their clients.

430. The Kahn Defendants were negligent in the following non-exclusive respects, as set forth in ¶¶ 8, 50-52, 80-81, 59, 71- 77, 96, 124, 130, 161-162, 194, 198, and 261-247, above:

- a. Negligently providing legal advice to Dragul as to the impermissible and undisclosed comingling of investor dollars and the formation and management of the SPEs;
- b. Negligently providing legal advice to Dragul upon the sale of PMG concerning the failure to pay distributions to investors and concealing from investors that the property had been sold but instead of

distributing funds to investors, Dragul kept those proceeds for his own use;

- c. Negligently preparing or assisting in the preparation of false and misleading updates to investors;
- d. Negligently preparing and back-dating fraudulent entity organizational documents in concert with Dragul, Markusch and Fox, to transfer assets of the Estate without the consent or knowledge of the Receiver;
- e. Negligently advising, assisting, and otherwise providing legal services to Dragul and his staff, including Markusch, and Fox regarding their continued violations of the Receivership Order, and
- f. All other acts which may be uncovered through discovery and which may be shown at trial.

431. The Kahn Defendants' failure to exercise the requisite due care in representing the GDA Entities, including providing legal advice and assisting to effect Dragul's fraudulent scheme and taking undisclosed and illegal commissions, was a proximate cause of the Estate damages and losses.

**XIV. TENTH CLAIM FOR RELIEF:
Breach of Fiduciary Duty
(*against the Kahn Defendants*)**

432. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

433. The Kahn Defendants represented the GDA Entities, which included handling general representation and litigation matters for them.

434. The Kahn Defendants owed the GDA Entities fiduciary duties of loyalty and due care.

435. The fiduciary duty of loyalty required the Kahn Defendants to place the interests of the clients – *i.e.*, the GDA Entities, including their investors– over the interests of themselves, Dragul, or Fox, and further required the Kahn Defendants to communicate honestly and truthfully with the GDA Entity investors.

436. The Kahn Defendants’ duty of loyalty and duty to provide conflict-free representation, required them to exercise independent professional judgment on behalf of the GDA Entities to determine if Dragul’s decisions or instructions were adverse to, or not in the best interest of the GDA Entities and the investors.

437. In addition to the fiduciary duty of loyalty and duty to provide conflict-free representation the Kahn Defendants owed fiduciary duties of utmost candor, communication, and utmost honesty.

438. The Kahn Defendants breached their fiduciary duties as set forth above, and in the following non-exclusive respects, as set forth in **Comp. Ex. 5**, and in ¶¶ 8, 50-52, 80-81, 59, 71- 77, 96, 124, 130, 161-162, 194, 198, and 261-247, above:

- a. Failing to disclose their receipt of unearned and undisclosed commissions and/or payment on fees from escrow of the sale of SPE Properties, including PMG, the Prospect Property, Grandview

Marketplace, AP Plaza, and Standley Lake, and from the SPE associated accounts;

- b. Failing to disclose that they also represented Fox and ACF at the same time they represented the GDA Entities, and in connection with their representation of Fox and ACF, that they took action that was harmful to the GDA Entities.
- c. Failing to advise the GDA Entities that Dragul and Fox's interests were adverse to those of the Entities;
- d. Placing their own, Dragul and Fox's financial interests above the GDA Entities and their Investors;
- e. Failing to act in the best interest of the GDA Entities and instead placing the Kahn and Fox Defendants' interests and Dragul's interests above those of the GDA Entities; and
- f. Other acts or omissions which may be identified through discovery and shown at trial.

439. The Kahn Defendants' acts or omissions as described in this claim for relief were breaches of the fiduciary duties described above that they owed to the GDA Entity investors and were intentional as well as willful and wanton.

440. The Kahn Defendants' actions or omissions were intentionally designed to enrich themselves to the detriment of the GDA Entity investors and were

intentionally designed to conceal material information from the GDA Entity investors, all to their detriment.

441. As a proximate cause of the Kahn Defendants' breaches of their fiduciary duties, the Estate suffered damages and losses.

**XV. ELEVENTH CLAIM FOR RELIEF:
Fraudulent Transfer – Colo. Rev. Stat. § 38-8-105(1)(A)
(*against all Defendants*)**

442. The Receiver realleges and incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

443. At all times relevant hereto, and with respect to the illegal and undisclosed Commissions, there existed one or more creditors whose claims arose either before or after their payment.

444. The Commissions identified with particularity on Exhibits **Compl. Exs. 3, 4, 5, 6 (as amended), and 7** were transfers made in furtherance of Dragul's Ponzi Scheme with the actual intent to hinder, delay, and defraud creditors. *See* ¶¶ 5-7, 22, 27, 42, 62, 82, 87, 89, 98-100, 111, 113, 121-123, 127-129, 131-137, 143-145, 168, 170-171, 173-175, 180, 191-193, 201-203, 211-213, and 293-313, *supra*.

445. Pursuant to C.R.S. § 38-8-110(1)(a), the Receiver is entitled to recover the entire amount of the illegal and undisclosed Commissions.

446. Pursuant to C.R.S. §§ 38-8-108(1)(a) and 38-8-109(2), the Receiver is entitled to a judgment avoiding the payment of all Commissions to Defendants,

directing the Commissions be set aside, and recovering the Commissions, or the value thereof, from Defendants for the benefit of the Estate.

**XVI. TWELFTH CLAIM FOR RELIEF:
Unjust Enrichment
(*against all Defendants*)**

447. The Receiver realleges incorporates the previous allegations of the Amended Complaint as if fully set forth herein.

448. By virtue of the Commissions and other payments, Defendants have each received benefits at the Estate's expense and at the expense of other creditors that would make it unjust for them to retain those benefits without paying the Estate the value thereof.

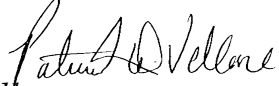
PRAYER FOR RELIEF

The Receiver requests that judgment enter in his favor and against Defendants for:

- A. Compensatory damages in an amount to be proven at trial;
- B. Awarding treble damages pursuant to COCCA, C.R.S. § 18-17-106(7) and C.R.S. § 18-4-405;
- C. Pre- and post-judgment interest as allowed by law; and
- D. Costs and attorney's fees as allowed by law; and
- E. For such other relief as may be just and proper in the circumstances.

Dated: June 1, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: 
/s/ Patrick D. Vellone

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ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of June, 2020 a true and correct copy of **the First Amended Complaint** was filed and served *via* the Colorado Courts E-Filing system to the following:

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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.

Dragul List of Investors from Indictments

First Indictment:

DATE FILED: June 8, 2022 11:07 PM

FILING ID: 8737B049CD5C5

CASE NUMBER: 2020CV30255

William and Adelyn Parker, William Parker, Jr., Ray Webb Parker, Marshall Parker, Patricia Marks, Chad and Kerri Miller, William Detterer, James and Susan Hess, Calvin Ewell, MSHR Inc., Jane Tennis, Eagle Group V, Linford Weaver, Nash Daswani, SC Advisors 7 LLC, and Madelyn Buckwalter [Repaid: Steven Kris, Eugene Risser, LEXICON, William Oehme]

Second Indictment:

Reba Buckwalter, MSHR, Inc., Scott Rockefeller, Jeffrey Tennis, Raymond Nutt, Calvin Ewell, David Hoe, Lori Hoe, Craig Naylor, David and Darcea Haar, HBT Partners, Benzmilller Family Trust (Kenneth Benzmilller), Eric Aafedt, Craig Evans, Laura Evans, James and Barbara McMahon, Consolidated GC of Texas (Naresh Daswani), Dennis Anderson, Steven Miller, Bret Chapman, Gideon and Rhonda Lapp, Eugene Risser, Gerald Deardorff, Philip Vineyard, Sarah Vineyard Irrevocable Trust, John Heffley, William Detterer, Thomas McCaffrey, Martin Rosenbaum, Barbara Burroughs, W. Slater Burroughs, Elizabeth Maurer, OM&K, LLC, Keith Snyder, Kristina Kapur-Mauleon and Luis Mauleon, Dublin Realty Company, David and Barbara Landis, Harper Beall, Marvin Weaver, Douglas and Michelle Shuff, Meeting Street Properties, LLC, Coleen Hurst, Scott Chatham, Leftin Investment Company (Soloman Leftin), Raymond Nutt, Gerald and Miriam Weaver, Eagle Group V (Eric Blow), Daniel Brittain, Kurtz Hersch, Jerry and Susan Horst, Horst Irrevocable Trust, Howard Anderson, Rex and Kimberly Stump, Eisen Steele Family Trust, LLC, 3855 Forest, LLC (David Kaufmann), Stoltzfus Properties, LLC (Al Stoltzfus), Aaron Steinberg, Leora Rosenbaum, Edward Delava – Trustee of the Fox 2002 Irrevocable Trust, Melissa Rosenbaum, Alan C. Fox Irrevocable Trust, Hagshama Funds.

High Street Condo Project, LLC Investor Details

#	INVESTOR NAME	DATE	INVESTMENT AMOUNT	CASH	TRANSFER/ GIFT	NOTES
1	Lowery, Randall	6/25/2014	\$50,000.00			DATE FILED: June 1, 2020 5:11 PM
2	Lucheta, Cristiano	6/11/2014	\$100,000.00			FILING ID: B5F0907F4E9FF
3	Provenzano, Sheryl	7/31/2014	\$300,000.00			CASE NUMBER: 2020CV30255
4	Rosenbaum, Martin	2/18/2014	\$150,000.00			
5	Snyder, Elaine	9/1/2014	\$0.00		\$50,000.00	\$50K TRANSFER/GIFT FROM CROSSPOINTE
6	Snyder, Keith	9/1/2014	\$150,000.00	\$150,000.00	\$100,000.00	\$100K TRANSFER/GIFT FROM CROSSPOINTE
7	Weaver, Linford	8/26/2014	\$100,000.00			
	TOTAL INVESTED		\$850,000.00	\$150,000.00	\$1,000,000.00	

**GDA PS Member, LLC Investor Detail
Prospect Square**

Investor Name	Date	Amount Invested	Notes
Dragul, Charli	3/1/2017	\$0.00	Gifted by Dragul
Dragul, Gary		\$0.00	
Dragul, Samuel	3/1/2017	\$0.00	Gifted by Dragul
Dragul, Spencer	3/1/2017	\$0.00	Gifted by Dragul
Nutt, Raymond	5/1/2017	\$0.00	Gifted by Dragul
Rosenbaum, Leora	2/19/2016	\$60,000.00	
			Contributed money in 2014 in anticipation of a new Prospect SPE, which did not occur due to to the bankruptcy, so this was considered a roll-over
Rosenbaum, Martin	2/15/2016	\$250,000.00	
			Contributed money in 2014 in anticipation of a new Prospect SPE, which did not occur due to to the bankruptcy so this was considered a roll over and not real cash
	2/17/2016		
Steinberg, Aaron	3/2/2016	\$95,000.00	Two separate investments
Totals		\$555,000.00	

DATE FILED: June 1, 2020 5:11 PM
FILING ID: B5F0907F4E9FF
CASE NUMBER: 2020CV30255

**GDA PS Member, LLC Investor Detail
Prospect Square**

Investor Name	Date	Amount Invested	Notes
Dragul, Charli	3/1/2017	\$0.00	Gifted by Dragul
Dragul, Gary		\$0.00	
Dragul, Samuel	3/1/2017	\$0.00	Gifted by Dragul
Dragul, Spencer	3/1/2017	\$0.00	Gifted by Dragul
Nutt, Raymond	5/1/2017	\$0.00	Gifted by Dragul
Rosenbaum, Leora	2/19/2016	\$60,000.00	
			Contributed money in 2014 in anticipation of a new Prospect SPE, which did not occur due to to the bankruptcy, so this was considered a roll-over
Rosenbaum, Martin	2/15/2016	\$250,000.00	
			Contributed money in 2014 in anticipation of a new Prospect SPE, which did not occur due to to the bankruptcy so this was considered a roll over and not real cash
	2/17/2016		
Steinberg, Aaron	3/2/2016	\$95,000.00	Two separate investments
Totals		\$555,000.00	

DATE FILED: June 1, 2020 5:11 PM
 FILING ID: B5F0907F4E9FF
 CASE NUMBER: 2020CV30255

Fort Collins WF 02, LLC Investor Details

#	NAME	% Interest in MIPA	% Interest Per Dragul Org Chart	Amount Invested	Date of Investment	Cash in	Roll-Over	Date of Transfer	Notes
1	1ST ANDERSON PROPERTIES, LLC (DENNIS ANDERSON)	4.801%	4.4032%	\$150,000	5/9/2008	\$150,000	\$0	N/A	DATE FILED: June 1, 2020 5:11 PM FILING ID: B5E0907F4E9EF CASE NUMBER: 2020CV30255 Gary's mother-in-law
2	AHLERS, KEITH	1.600%	1.4674%	\$50,000	10/23/2008	\$50,000	\$0	N/A	
3	Ahrendt, Audrey	N/A	3.6030%	\$0	N/A	\$0	\$0	N/A	
4	ANDERSON, HOWARD	1.600%	1.4674%	\$50,000	5/12/2008	\$50,000	\$0	N/A	No evidence of any money actually invested or executed MIPA
5	Becker, Russel	N/A	3.6034%	??	??	\$0	\$0	N/A	No evidence of any money actually invested or executed MIPA
6	CHATHAM, SCOTT	1.600%	1.4674%	\$50,000	5/8/2008	\$50,000	\$0	N/A	
7	CYPRESS VENTURES, LLC (KIRK HOBART)	6.402%	5.8715%	\$200,000	9/26/2008	\$200,000	\$0	N/A	
8	DETTNERER, WILLIAM	1.545%	1.4674%	\$50,000	4/29/2008	\$50,000	\$0	N/A	
9	Dragul, Gary	N/A	4.3132%	\$0	N/A	\$0	\$0	N/A	No evidence of any money actually invested or executed MIPA
10	Dragul, Paul	N/A	1.8022%	\$0	N/A	\$0	\$0	N/A	Gary Dragul's Father No evidence of any money actually invested or executed MIPA
11	Dragul, Paulette	N/A	1.8022%	\$0	N/A	\$0	\$0	N/A	Gary Dragul's Mother No evidence of any money actually invested or executed MIPA
12	EDDS, GINA	1.600%	1.4674%	\$50,000	9/22/2008	\$50,000	\$0	N/A	
13	ESBENSHADE, J. HAROLD AND RUBY	1.600%	1.4674%	\$50,000	5/12/2008	\$50,000	\$0	N/A	
14	EVANS, LAURA	3.201%	2.9358%	\$100,000	8/28/2008	\$100,000	\$0	N/A	
15	EWELL, CALVIN	1.545%	1.4674%	\$50,000	5/7/2008	\$50,000	\$0	N/A	
16	GRAGG, ROBERT AND PATSY	3.201%	2.9358%	\$100,000	10/17/2008	\$100,000	\$0	N/A	
17	GREENE, JOHN	1.600%	1.4674%	\$50,000	9/10/2008	\$50,000	\$0	N/A	
18	GROW, GARY AND PAMELA	1.600%	1.4674%	\$50,000	10/28/2008	\$50,000	\$0	N/A	
19	H&S EQUITY PARTNERS (DAVID HOWE AND THOMAS STAC)	1.600%	1.4674%	\$50,000	6/4/2008	\$50,000	\$0	N/A	
20	HESS, JAMES AND SUSAN	1.600%	1.4674%	\$50,000	9/29/2008	\$50,000	\$0	N/A	
21	HOFFER, TYSON	3.201%	2.9358%	\$100,000	6/24/2008		\$100,000	6/24/2008	This is a "roll-over" investment of the investor's \$100,000 investment in Walden 08, LLC on 06/04/2008
22	HURST, CHAD	1.545%	3.9579%	\$50,000	6/6/2008	\$50,000	\$0	N/A	
23	HURST, CHAD AND COLEEN			\$27,669	6/27/2008	\$0	\$0	N/A	Noted as "Gary's Gift" in GDA records
24	HURST, CHAD AND COLEEN	5.431%	2.4905%	\$142,000	6/27/2008	\$0	\$142,000	6/27/2008	This investment is a "roll-over" of the investors' former \$142,000 investment in Southlake 07 D, LLC on 12/12/2007
25	LANDIS, DAVID AND BARBARA	1.600%	1.4674%	\$50,000	5/9/2008	\$50,000	\$0	N/A	
26	LAPP, RHONDA AND GIDEON	1.600%	1.4674%	\$50,000	6/2/2008	\$50,000	\$0	N/A	
27	LEHMAN, LEROY	1.545%	1.4674%	\$50,000	5/1/2008	\$50,000	\$0	N/A	
28	LYNGE, SCOTT	1.600%	1.4674%	\$50,000	10/8/2008	\$50,000	\$0	N/A	
29	Susan Markusch	N/A	1.8022%			\$0	\$0	N/A	GDA Controller and CFO No evidence of any money actually invested or executed MIPA
30	MAULEON, KRISTNA KAPUR AND LUIS	1.600%	1.4674%	\$50,000	2/16/2009	\$50,000	\$0	N/A	
31	MOSKOWITZ, JONATHAN AND ELIZABETH	4.9450%	4.5352%	\$160,000	3/6/2008	\$160,000	\$0	N/A	
32	MSHR, INC. (ROCKEFELLER)	1.600%	1.4674%	\$50,000	5/6/2008	\$50,000	\$0	N/A	
33	NEWMAN, JONATHAN GRAY	1.600%	1.4674%	\$50,000	6/16/2008	\$50,000	\$0	N/A	
34	O'Donoghue, Kristen	N/A	3.6034%			\$0	\$0	N/A	GDA Investor Analyst No evidence of any money actually invested or executed MIP
35	OEHME, WILLIAM	1.600%	1.4674%	\$50,000	8/18/2008	\$50,000	\$0	N/A	
36	Prima Center 07, LLC (Robert Kauffman)	N/A	0.4491%			\$0	\$0	N/A	Gary Dragul's personal friend and attorney No evidence of any money actually invested or executed MIPA

37	RISSER, R. EUGENE	1.600%	1.4674%	\$50,000	5/1/2008	\$0	\$50,000	5/1/2008	This is a "roll over" of the investor's prior \$50,000 investment in Southlake 07 D, LLC on 10/03/2007
38	SHUFF, DOUGLAS AND MICHELLE	1.545%	1.4674%	\$50,000	5/12/2008	\$50,000	\$0	N/A	
39	SNYDER, KEITH			\$50,000	5/2/2008	\$50,000	\$0	N/A	
40	SNYDER, KEITH	1.545%	2.9348%	\$50,000	7/31/2008	\$50,000	\$0	N/A	
41	SPEEDWELL PARTNERS (JOEL GIBBEL)	1.600%	1.4674%	\$50,000	5/14/2008	\$50,000	\$0	N/A	
42	STOLTZFUS, KAREN	1.600%	1.4674%	\$50,000	5/12/2008	\$50,000	\$0	N/A	
43	STUMP, REX	3.201%	2.9358%	\$100,000	9/19/2008	\$100,000	\$0	N/A	
44	TENNIS, JANE	1.545%	1.4674%	\$50,000	5/2/2008	\$50,000	\$0	N/A	
45	TOMIKA INVESTMENT COMPANY (TOM LATIMER)	3.201%	2.9358%	\$100,000	8/29/2008	\$100,000	\$0	N/A	
46	WELLER, KEITH	1.600%	1.4674%	\$50,000	5/5/2008	\$50,000	\$0	N/A	
47	WILLIAM HARNISH TRUST	1.600%	1.4674%	\$50,000	1/9/2009	\$50,000	\$0	N/A	
48	WORTH, NICHOLAS AND KAREN	1.600%	1.4674%	\$50,000	9/19/2008	\$50,000	\$0	N/A	
	TOTALS	83.599%	99.4706%	\$2,679,669		\$2,360,000	\$292,000		

Plaza Mall of Georgia North 08 A Junior, LLC Investor Detail

#	NAME	AMOUNT OF INVESTMENT	DATE	CASH INVESTMENT	DATE OF CASH INVESTMENT	ROLL-OVER	DATE OF ROLL-OVER	PROFITS IN	NOTES
1	3855 FOREST, LLC (DONALD KAUFMANN)	\$100,000.00	5/1/2014			\$100,000	5/1/2014		SAFEWAY MARKETPLACE TRANSFER
2	AAFEDT, ERIC	\$50,000.00	2/1/2009			\$50,000	2/1/2009		SOUTHLAKE TRANSFER
	ANDERSON, HOWARD	\$25,000.00	11/27/2013	\$25,000	11/27/2013				
	ANDERSON, HOWARD	\$25,000.00	11/27/2013			\$25,000	11/27/2013		CP LOAN TRANSFER
3	ANDERSON, HOWARD	\$50,000.00	11/27/2013			\$50,000	11/27/2013		CROSSPOINTE TRANSFER
4	BEALL, HARPER	\$100,000.00	2/1/2009			\$100,000	2/1/2009		SOUTHLAKE TRANSFER
	BRITTAIN, DANIEL	\$50,000.00	9/25/2013			\$50,000	9/25/2013		CROSSPOINTE TRANSFER
5	BRITTAIN, DANIEL	\$50,000.00	9/25/2013	\$50,000	9/25/2013				
6	BURROUGHS, BARBARA (EQUITY TRUST)	\$50,000.00	1/5/2009	\$50,000	1/5/2009				
7	BURROUGHS, W. SLATER	\$50,000.00	12/31/2008	\$50,000	12/8/2008				
8	CHATHAM, SCOTT	\$100,000.00	4/2/2013			\$100,000	4/2/2013		CROSSPOINTE TRANSFER
9	Dragul, Gary	\$0.00							
10	DUBLIN REALTY COMPANY (HERMAN FERR)	\$570,000.00	1/20/2009	\$570,000	1/22/2009				
	EAGLE GROUP V (ERIC BLOW)	\$18,283.00	9/30/2013			\$18,283	9/30/2013		CP LOAN TRANSFER
	EAGLE GROUP V (ERIC BLOW)	\$31,717.00	9/30/2013	\$31,717	9/30/2013				
	EAGLE GROUP V (ERIC BLOW)	\$50,000.00	9/30/2013			\$50,000	9/30/2013		CROSSPOINTE TRANSFER
12	EDWARD DELAVA TRUSTEE, OF THE FOX 2002 IRREVOCABLE TRUST	\$300,000.00	10/27/2015	\$300,000	10/27/2015				
	EISEN STEELE FAMILY TRUST, LLC (NANCY STEELE)	\$32,000.00	1/1/2014			\$32,000	1/1/2014		REPRESENTS INTEREST FROM ROSE LOAN
13	EISEN STEELE FAMILY TRUST, LLC (NANCY STEELE)	\$100,000.00	1/1/2014			\$100,000	1/1/2014		ROSE TRANSFER
14	EVANS, CRAIG	\$50,000.00	2/1/2009			\$50,000	2/1/2009		SOUTHLAKE TRANSFER
15	EVANS, LAURA	\$50,000.00	2/1/2009			\$50,000	2/1/2009		SOUTHLAKE TRANSFER
16	EWELL, CALVIN	\$100,000.00	12/31/2008	\$100,000	12/16/2008				
	HERSCH, KURTZ	\$25,000.00	10/17/2013			\$25,000	10/17/2013		CP LOAN TRANSFER
	HERSCH, KURTZ	\$28,000.00	10/17/2013			\$28,000	10/17/2013		CROSSPOINTE TRANSFER
	HERSCH, KURTZ	\$47,000.00	10/17/2013			\$47,000	10/17/2013		CROSSPOINTE TRANSFER (WAS PENSCO)
17	HERSCH, KURTZ	\$50,000.00	10/17/2013	\$50,000	10/17/2013				
	HESS, JAMES AND SUSAN	\$25,000.00	9/12/2013	\$25,000	9/12/2013				
18	HESS, JAMES AND SUSAN	\$25,000.00	9/12/2013			\$25,000	9/12/2013		CP LOAN TRANSFER
	HESS, JAMES AND SUSAN	\$50,000.00	9/12/2013			\$50,000	9/12/2013		CROSSPOINTE TRANSFER
	HORST IRREVOCABLE TRUST (GERALD HORST)	\$50,000.00	11/18/2013			\$50,000	11/18/2013		CP LOAN TRANSFER
19	HORST IRREVOCABLE TRUST (GERALD HORST)	\$100,000.00	11/18/2013			\$100,000	11/18/2013		CROSSPOINTE TRANSFER
20	HORST, GERALD AND SUSAN	\$50,000.00	11/18/2013	\$50,000	11/18/2013				
	HURST, COLEEN	\$150,000.00	4/15/2013	\$150,000	4/15/2013				
21	HURST, COLEEN	\$150,000.00	4/15/2013			\$150,000	4/15/2013		SYRACUSE TRANSFER
22	LANDIS, DAVID AND BARBARA	\$50,000.00	1/29/2009	\$50,000	1/29/2009				
23	LAPP, GIDEON AND RHONDA	\$50,000.00	1/30/2009	\$50,000	1/30/2009				
24	LEFTIN INVESTMENT COMPANY (SOL LEFTIN)	\$100,000.00	9/1/2013			\$100,000	9/1/2013		ROSE TRANSFER
25	MAULEON, KRISTNA KAPUR AND LUIS	\$100,000.00	1/15/2009	\$100,000	1/14/2009				
26	MAURER, ELIZABETH	\$100,000.00	12/31/2008	\$100,000	12/22/2008				
27	MCMAHON, JAMES	\$50,000.00	10/1/2013			\$50,000	10/1/2013		CROSSPOINTE TRANSFER
28	MEETING STREET PROPERTIES, LLC (JOHN BEALL)	\$163,000.00	2/1/2009			\$163,000	2/1/2009		SOUTHLAKE TRANSFER
29	NUTT, RAYMOND	\$50,000.00	9/1/2013			\$50,000	9/1/2013		SYRACUSE TRANSFER
30	OM&K, LLC (KELLY SKINNER)	\$50,000.00	12/31/2008	\$50,000	12/22/2008				
31	PARKER, MARSHALL	\$50,000.00	12/31/2008	\$50,000	12/19/2008				
32	PARKER, RAY WEBB	\$50,000.00	12/31/2008	\$50,000	12/19/2008				
33	PARKER, WILLIAM JR.	\$50,000.00	12/31/2008	\$50,000	12/19/2008				
34	ROCKEFELLER, W. SCOTT (PENSCO)	\$50,000.00	12/31/2008	\$50,000	12/26/2008				
	ROSENBAUM, LEORA	\$50,000.00	5/6/2015			\$50,000	5/6/2015		LOAN TRANSFER
35	ROSENBAUM, LEORA	\$50,000.00	5/6/2015	\$50,000	5/6/2015				
	ROSENBAUM, MARTIN	\$100,000.00	9/16/2013	\$100,000	9/16/2013				
36	ROSENBAUM, MARTIN	\$300,000.00	7/1/2015			\$300,000	7/1/2015		GDA DIGITAL MEDIA TRANSFER
37	ROSENBAUM, MELISSA	\$100,000.00	4/1/2016			\$100,000	4/1/2016		ADDISON TRANSFER
	SARAH VINEYARD TRUST	\$25,000.00	9/13/2013	\$25,000	9/13/2013				
	SARAH VINEYARD TRUST	\$25,000.00	9/13/2013			\$25,000	9/13/2013		CP LOAN TRANSFER
38	SARAH VINEYARD TRUST	\$50,000.00	9/13/2013			\$50,000	9/13/2013		CROSSPOINTE TRANSFER
39	SHUFF, DOUGLAS AND MICHELLE	\$50,000.00	3/10/2009	\$50,000	3/10/2009				
40	SNYDER, KEITH	\$100,000.00	12/31/2008	\$100,000	12/26/2008				

41	STEINBERG, AARON	\$50,000.00	5/7/2015			\$50,000	5/7/2015		LOAN TRANSFER
	STEINBERG, AARON	\$75,000.00	5/7/2015	\$75,000	5/7/2015				
42	STOLTZFUS PROPERTIES (AL AND LINDA STOLTZFUS)	\$125,000.00	7/1/2014					\$125,000	GIFT FROM GARY
	STUMP, REX AND KIMBERLY	\$36,567.00	11/13/2013			\$36,567	11/13/2013		CP LOAN TRANSFER
	STUMP, REX AND KIMBERLY	\$63,433.00	11/13/2013	\$63,433	11/13/2013				
43	STUMP, REX AND KIMBERLY	\$100,000.00	11/13/2013			\$100,000	11/13/2013		CROSSPOINTE TRANSFER
44	TENNIS, JEFFREY	\$100,000.00	12/31/2008	\$100,000	12/23/2008				
	VINEYARD, PHILIP	\$25,000.00	9/11/2013	\$25,000	9/11/2013				
	VINEYARD, PHILIP	\$25,000.00	9/11/2013			\$25,000	9/11/2013		CP LOAN TRANSFER
45	VINEYARD, PHILIP	\$50,000.00	9/11/2013			\$50,000	9/11/2013		CROSSPOINTE TRANSFER
	WEAVER, GERALD AND MIRIAM	\$50,000.00	9/23/2013			\$50,000	9/23/2013		CROSSPOINTE TRANSFER
46	WEAVER, GERALD AND MIRIAM	\$50,000.00	9/23/2013	\$50,000	9/23/2013				
47	WEAVER, MARVIN (PENSCO)	\$100,000.00	2/19/2009	\$100,000	2/19/2009				
		\$5,315,000.00		\$2,740,150.00		\$2,449,850.00		\$125,000.00	

DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720.865.7800	DATE FILED: Dec 26, 2018 11:37 AM FILE NUMBER: H9C8057BB49CD5C5 CASE NUMBER: 2018CV33011
<p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p>Δ COURT USE ONLY Δ</p> <hr/> <p>Case Number: 2018CV33011</p> <p>Courtroom: 424</p>
SPRINGER AND STEINBERG, P.C. Jeffrey A. Springer, Esq. (Bar No. 6793) 1600 Broadway, Suite 1200 Denver, Colorado 80202 Tel: 303.861.2800 Fax: 303.832.7116 Email: jspringer@springersteinberg.com ATTORNEYS FOR DEFENDANTS	
<p>MOTION TO STAY</p>	

COME NOW, Defendants Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC, by and through their counsel of record Jeffrey A. Springer of Springer and Steinberg, P.C., and hereby move that the Court stay proceedings in this matter until the case *The People of the State of Colorado v. Gary Dragul*, 18CR001092, which is pending in Arapahoe County District Court, is resolved.

CERTIFICATE OF CONFERRAL PURSUANT TO C.R.C.P. 121, § 1-15(8)

On October 26, 2018 undersigned counsel conferred with Attorney General Sueanna Johnson regarding the relief requested herein and she advised that the Plaintiff does take any position on the Motion.

GROUND FOR THE MOTION:

BACKGROUND

The Complaint¹ in this matter alleges that from January 2008 through December 2015 the Defendants committed multiple acts of securities fraud. As alleged, the Defendants persuaded investors to purchase membership interests in various limited liability companies (“companies”) without disclosing material information to them. The companies were engaged in the practice of purchasing and selling commercial property. The Complaint also alleges that when the Defendants sold various parcels of commercial property, they did not repay all investors or even inform them that the property had been sold. It is also alleged that the Defendants commingled the assets of the companies.

In addition to this matter, Mr. Dragul has been indicted by a Colorado grand jury in Arapahoe County District Court case 18CR00192 (“Criminal Case”). The indictment² in the Criminal Case charges that in 2012 and 2013, as part of the conduct described in the Complaint, Mr. Dragul committed multiple acts of securities fraud against the investors who purchased membership interests in the companies.

¹ A true and correct copy of the Complaint is attached as Exhibit 1 and is incorporated herein by reference.

² A true and correct copy of the Indictment is attached as Exhibit 2 and is incorporated herein by reference.

ARGUMENT

This Court should stay this case until the Criminal Case has been resolved. A defendant in a civil case who is also defending criminal charges based on the same or similar allegations giving rise to the civil case must often choose between testifying in the civil case and asserting his Fifth-amendment privilege against self-incrimination. *See Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009). In a criminal case, a fact finder cannot draw an adverse inference from the defendant's decision to invoke his Fifth-amendment privilege against self-incrimination, but in a civil case, the fact finder can. *Griffin v. Cal.*, 380 U.S. 609, 613-15 (1965); *People v. Ortega*, 597 P.2d 1034, 1036-37 (Colo. 1979); *McGillis Inv. Co. v. First Interstate Fin. Utah LLC*, 2015 COA 116, ¶27, 370 P.3d 295; *People v. Williams*, 100 P.3d 565, 566-67 (Colo. App. 2004). To prevent a defendant's assertion of his privilege against self-incrimination from prejudicing his civil case, a court may stay civil proceedings until the criminal case is resolved. *People v. Shirfrin*, 2014 COA 14, ¶26, 342 P.3d 506. Courts consider six factors when determining whether to stay civil proceedings pending the resolution of a criminal case:

1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Id.

Analyzing these factors, first, both the Criminal Case and this case allege that Mr. Dragul committed securities fraud in connection with selling membership interests in the companies. In fact, the allegations in the Criminal Case are completely subsumed in this case. Where this case alleges that the Defendants committed securities fraud from 2008 through 2015, the Criminal Case focuses on certain instances of alleged securities fraud that occurred during 2012 and 2013. Thus,

there is substantial legal and factual overlap between this case and the Criminal Case. Second, the Criminal Case commenced in April 2018 when a Colorado grand jury indicted Mr. Dragul. Since that time, the case has been progressing toward resolution without significant delays. These first two factors strongly weigh in favor of staying this case. *See id.* at ¶¶29-31.

The remaining factors also weigh in favor of staying this case. As to the third factor, the Plaintiff in this case will not suffer prejudice. Although the plaintiffs are nominally different in each case—Gerald Rome, Securities Commissioner for the State of Colorado in this case and the People of the State of Colorado in the Criminal Case—they are actually the same because Mr. Rome is acting in his official capacity for the State of Colorado. Both plaintiffs are also being represented by the State Attorney General’s Office. Given the overlap between the two cases, the plaintiffs’ shared identity, and the plaintiffs’ shared counsel, prosecuting the Criminal Case will also move the civil case forward. Indeed, resolution of the Criminal Case may also resolve issues involved in this case. As to the fourth factor, Mr. Dragul’s private interest is substantial. Staying the civil case will allow him to exercise his Fifth Amendment rights, if necessary, without an adverse inference being drawn in the civil case. Moreover, granting a stay will ease the financial burdens on Mr. Dragul by preventing duplicative hearings in both cases and by allowing his attorneys to focus their efforts on the Criminal Case and this case in succession, if necessary. As to the fifth factor, staying this case is also in the courts’ best interest. It will avoid duplicative litigation, thus conserving the courts’ resources. And finally, the public interest will still be served because the allegations against Mr. Dragul in the Criminal Case will still be resolved without delay, and again, the outcome of the Criminal Case may resolve issues pending in this case. Further a receiver has been appointed in this case so that actions to preserve the Estate and possibly to provide restitution to investors can still proceed. Moreover, the Defendants have been restrained

in this case and Mr. Dragul is subject to restrictions in the Criminal Case attendant to his posting of bond. Hence, the public interest is certainly not compromised in anyway by staying this action and as set forth above, is likely enhanced.

CONCLUSION

This Court should stay this case to protect Mr. Dragul's Fifth-amendment rights. He should not be forced to decide whether to testify in this case or to assert his Fifth-amendment rights. Indeed, the factors governing whether or not to grant a stay, especially the first and second factors, all weigh in favor of granting a stay.

WHEREFORE, the Defendants respectfully request that this Court stay this case until *The People of the State of Colorado v. Gary Dragul*, 18CR001092, which is pending in Arapahoe County District Court, is resolved.

Respectfully submitted this 26th day of October, 2018,

SPRINGER AND STEINBERG, P.C.

By: /s/ Jeffrey A. Springer
Jeffrey A. Springer, #6793
ATTORNEYS FOR DEFENDANTS
*Original signature on file at the
Springer and Steinberg, P.C.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 26th day of October, 2018, the above and foregoing **MOTION TO STAY** was filed with the Court and a true and accurate copy of the same was served via ICCES to:

Robert Finke
Sueanna Johnson
Matthew Bouillon Mascarenas
Assistant Attorney Generals
1300 Broadway, 8th Floor
Denver, Colorado 80203

/s/ Michaela Lloyd

Michaela Lloyd

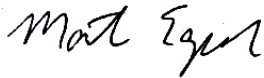
*Original signature on file at the
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DISTRICT COURT, DENVER COUNTY, COLORADO		
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202		
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF v. Defendant(s) GARY DRAGUL et al.		DATE FILED: November 9, 2018 9:10:17 AM CASE NUMBER: 2018CV33011 CASE NUMBER: 2020CV30255
		△ COURT USE ONLY △
		Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Motion to Stay (w/attach)		

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

Consistent with the telephonic hearing conducted on November 9, 2018, the enforcement action shall be stayed for an initial period of 63 days from the date of this order. Counsel will file a joint status report on or before the 63rd day to advise the Court whether the stay should be continued for an additional period of time. The stay applies to the enforcement action only, and is not a bar to actions conducted by or on behalf of the receiver.

Issue Date: 11/9/2018



MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720.865.7800	<p style="text-align: center;">Δ COURT USE ONLY Δ</p> <p>Case Number: 2018CV33011</p> <p>Courtroom: 424</p>
<p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	
SPRINGER AND STEINBERG, P.C. Jeffrey A. Springer, Esq. (Bar No. 6793) 1600 Broadway, Suite 1200 Denver, Colorado 80202 Tel: 303.861.2800 Fax: 303.832.7116 Email: jspringer@springersteinberg.com ATTORNEYS FOR DEFENDANTS	
MOTION TO STAY	

COME NOW, Defendants Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC, by and through their counsel of record Jeffrey A. Springer of Springer and Steinberg, P.C., and hereby move that the Court stay proceedings in this matter until the case *The People of the State of Colorado v. Gary Dragul*, 18CR001092, which is pending in Arapahoe County District Court, is resolved.

CERTIFICATE OF CONFERRAL PURSUANT TO C.R.C.P. 121, § 1-15(8)

On October 26, 2018 undersigned counsel conferred with Attorney General Sueanna Johnson regarding the relief requested herein and she advised that the Plaintiff does take any position on the Motion.

GROUND FOR THE MOTION:

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Respectfully submitted this 26th day of October, 2018,

SPRINGER AND STEINBERG, P.C.

By: /s/ Jeffrey A. Springer
Jeffrey A. Springer, #6793
ATTORNEYS FOR DEFENDANTS
*Original signature on file at the
Springer and Steinberg, P.C.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 26th day of October, 2018, the above and foregoing **MOTION TO STAY** was filed with the Court and a true and accurate copy of the same was served via ICCES to:

Robert Finke
Sueanna Johnson
Matthew Bouillon Mascarenas
Assistant Attorney Generals
1300 Broadway, 8th Floor
Denver, Colorado 80203

/s/ Michaela Lloyd

Michaela Lloyd

*Original signature on file at the
Springer and Steinberg, P.C.*