

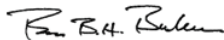
DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) HARVEY SENDER AS RECEIVER FOR GARY DRAG v. Defendant(s) GARY J DRAGUL et al.	DATE FILED: June 24, 2022 CASE NUMBER: 2020CV30255 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2020CV30255 Division: 414 Courtroom:
Order: Amended Proposed Case Management Order (also filed on behalf of defs Gary Dragul, Benjamin Kahn, the Conundrum Group, P.C., Marlin Hershey, Performance Holdings, Inc., and Susan Markusch)	

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

THIS MATTER is before the court on the parties' Amended Proposed Case Management Order, filed June 3, 2022. The court HEREBY ADOPTS the Amended Proposed Case Management Order as an Order of this court with the following AMENDMENT:

With respect to paragraph 8.a., pursuant to this court's Order Re: Defendant Gary Dragul's Renewed Motion for Reconsideration of Order Denying Motion to Dismiss First Amended Complaint, issued June 21, 2022, **Defendant Dragul shall have until and including July 5, 2022 within which to answer the First Amended Complaint.**

Issue Date: 6/24/2022



ROSS B BUCHANAN
 District Court Judge

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC v. Defendants: GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; SUSAN MARKUSCH, an individual; MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.	<div style="text-align: center;">▲ COURT USE ONLY ▲</div> Case No.: 2020CV30255 Division/Courtroom: 414
AMENDED PROPOSED CASE MANAGEMENT ORDER	

The case management conference in this case was conducted on Friday, May 27, 2022 at 10:00 a.m., in person, in Courtroom 414 in Denver District Court at 1437 Bannock Street, Denver, CO 80202. Appearing for the Plaintiff was Patrick D. Vellone and Rachel A. Sternlieb, for Defendant Gary Dragul was Christopher Mills, for Marlin Hershey and Performance Holdings, Inc. was Thomas Goodreid and for Benjamin Kahn and the Conundrum Group, LLP was John Palmeri.

1. At Issue Date

The at issue date is April 22, 2022, per the Court’s Minute Order dated April 22, 2022.

2. Responsible Attorney’s Name, Address, Phone Number and E-mail Address

The responsible attorneys for the parties herein are as follows:

- a. **Attorneys for Plaintiff, Harvey Sender (the “Receiver” or “Plaintiff”)**

Patrick D. Vellone, #15284
Rachel A. Sternlieb, #51404
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1900
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Phone: (303) 534-4499
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b. Attorneys for Defendant Gary Dragul (“Dragul”)

Paul L. Vorndran
Christopher S. Mills
1675 Broadway, 26th Floor
Denver, CO 80202
Phone: (303) 573-1600
pvorndran@joneskeller.com
cmills@joneskeller.com

c. Attorneys for Defendants Kahn and The Conundrum Group, LLP (the “Kahn Defendants”)¹

John M. Palmeri
Margaret L. Boehmer
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¹ The Receiver and the Kahn Defendants have reached a settlement agreement resolving all of the Receiver’s claims against them. Thus, while the Kahn Defendants are included and have participated in the drafting of this Amended Proposed Case Management Order, most of the sections relating to the Kahn Defendants will be mooted by virtue of the pending settlement. Once drafted and mutually executed, the Receiver must submit the proposed settlement agreement to the Receivership Court for approval.

d. Attorneys for Defendant Hershey and Performance Holdings (the “Hershey Defendants”)

Thomas E. Goodreid
Paul M. Grant
7761 Shaffer Parkway, Suite 105
Littleton, CO 80127
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e. Defendant Markusch, *pro se*

Susan Markusch
6321 South Geneva Circle
Englewood, CO 80111
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smarkusch19@gmail.com

f. Defendant Olson Real Estate Services, LLC (“Olson Real Estate”)

Defendant Olson Real Estate is currently not represented by counsel and may not appear and participate in these proceedings without counsel. *See, e.g.*, C.R.S. § 13-1-127. Former counsel’s September 3, 2021 Notice and Motion to Withdraw as Counsel of Record for Defendants Susan Markusch and Olson Real Estate was granted by the Court on October 21, 2021. Since then, Olson Real Estate has failed to retain counsel nor has one entered an appearance on its behalf herein.

3. Meet and Confer

The Parties held their meet and confer as to the initial proposed case management order on Monday May 23 – 25, 2022. Given the number of attorneys involved, the conferral was done via electronic mail. The Parties further conferred with the Court’s input at the Case Management Conference on May 27, 2022.

Patrick D. Vellone and Rachel A. Sternlieb participated for the Plaintiff and the following counsel participated for the respective defendants:

Christopher Mills and Paul Vorndran for Defendant Gary Dragul;

John Palmeri and Margaret Boehmer for the Kahn Defendants;

Thomas Goodreid and Paul Grant for the Hershey Defendants;

Susan Markusch, who is proceeding *pro se*; and

Olson Real Estate did not participate as it has no counsel of record and as an entity, it cannot appear *pro se*.

4. Description of the Case

a. **Plaintiff:** This case stems from a complex Ponzi scheme in which investors lost more than \$70 million. The scheme was orchestrated by Dragul, who has been indicted and faces two separate trials on 6 counts of securities fraud. As set forth in the Amended Complaint, the defendants each played an integral role in the scheme. Dragul, with the assistance of his co-conspirators solicited investments from investors by distributing false and misleading offering materials. Fictitious profits were paid to investors to allow the scheme to remain undetected for years while Dragul stole millions. After Dragul was indicted, the Receiver was appointed to administer the Dragul and the GDA Entities' assets for the benefit of the defrauded creditors. Plaintiff asserts the following claims:

1. Violations of the Colorado Securities Act, Colo. Rev. Stat. §§ 11-51-501 and 11-51-604(1), (2)(A), (3), and (5) for:

a. Securities Registration Violations, C.R.S. §§ 11-51-604(1) and 11-51-301 against Dragul

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

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

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

e. Substantial Assistance Claims, C.R.S. § 11-51-604(5)(c) against the Kahn Defendants, the Hershey Defendants, and Markusch.

2. Negligence against Dragul and the Hershey Defendants;

3. Negligent Misrepresentation against Dragul and the Hershey Defendants;

4. Civil Theft against all Defendants;

5. Violations of the Colorado Organized Crime Control Act (“COCCA”), C.R.S. § 18-17-101 *et seq.* against Dragul and the Hershey Defendants;

6. Aiding and Abetting Violations of COCCA against Markusch, and the Kahn and Hershey Defendants;

7. Breach of Fiduciary Duty against Defendant Dragul;

8. Aiding and Abetting Dragul’s Breach of Fiduciary Duty against the Kahn Defendants;

9. Negligence against the Kahn Defendants;

10. Breach of Fiduciary Duty against the Kahn Defendants;

11. Fraudulent Transfer under C.R.S. § 38-8-105(1)(A) against all Defendants; and

12. Unjust Enrichment against all Defendants.

b. **Defendant Dragul:** As Mr. Dragul argued in his prior motion to dismiss the Receiver’s amended complaint, and as remains pending before the Court in the form of Mr. Dragul’s Renewed Motion for Reconsideration of Order Denying Motion to Dismiss First Amended Complaint, the Receiver lacks standing to assert claims belonging to third-party investor-creditors, cannot sue Mr. Dragul because Mr. Dragul is personally in the receivership, is barred from asserting the claims under the doctrine of *in pari delicto*, is barred from asserting the claims under the plain language of the order appointing him, and is estopped from asserting the claims because they result in an unlawful double recovery and because the Receiver has and is using Mr. Dragul’s attorney-client privileged information. Moreover, many of the Receiver’s claims are time-barred or otherwise not cognizable.

Additionally, because Mr. Dragul is under indictment, this civil action should be stayed pending resolution of the criminal cases. Otherwise, Mr. Dragul will be denied a fair opportunity to defend against the civil claims without waiving his constitutional rights under the Fifth Amendment, and the other defendants in the case will be unable to obtain from Mr. Dragul the evidence they need to defend themselves against the Receiver’s claims.

In addition to these legal defenses and the appropriateness of a stay, Mr. Dragul's counsel² notes that the Receiver cannot demonstrate any Ponzi scheme in this matter, that no securities violations occurred and that the Receiver's allegations rely on a misreading of applicable securities laws, and that the Receiver will be unable to meet its burden of proof as to any of his other claims.

Moreover, to the extent any damages were suffered by anyone—whether by the Receiver or third-party creditors—those damages were caused by the Receiver's own mismanagement of the receivership estate.

c. **The Kahn Defendants:** Benjamin Kahn and the Conundrum Group, LLP (collectively the "**Law Firm**") represented Dragul pursuant to a September 2012 written fee agreement with GDA RES. The Law Firm's role was limited to litigation defense and risk management issues, encompassing a variety of projects and involving work on behalf of Dragul and his two operating companies, GDA RES and GDA REM.

The State filed a civil claim against Dragul and sought a receivership over his assets. When the Receiver took over for Dragul and his entities on August 30, 2018, the Law Firm continued to represent Dragul and GDA RES pursuant to its existing fee agreement. The Law Firm already had made significant inroads in defending the State's claims and had secured one or more buyers for GDA RES and GDA REM. The Law Firm demanded that the Receiver honor the Operating Agreements and SPE distinctions as required by the Receivership Order.

The Law Firm terminated its attorney-client relationship with the Receiver in writing on February 28, 2019 and asserted a claim against the Receivership Estate for close to \$750,000 in outstanding legal fees by the mandatory deadline. All told, the Law Firm completed 125 total billing matters for GDA RES or Dragul and opened 24 of those matters during the Receivership.

Prior to the Receivership, the Law Firm transmitted its billings with respect to GDA RES matters to Dragul (in his GDA RES corporate capacity), Susan Markush (as the GDA RES Controller) and Elizabeth Gold (as GDA RES in-house counsel). The Law Firm billed and accounted for its services monthly, and occasionally issued interim bills. After the onset of the Receivership, the Law Firm transmitted its billings with respect to GDA RES matters to Dragul, Markush and Harvey Sender (in his capacity as the Receiver for GDA RES). The Law Firm's billing records,

² In order to preserve his rights under the Fifth Amendment, Mr. Dragul does not, in this proposed Case Management Order, expressly admit or deny any allegations. The statements provided herein are those of his counsel and should not be construed to constitute such a waiver.

accounting records and work product establish the Law Firm charged Dragul and his entities for legal work and received payment consistent with its billings. The Law Firm subsequently terminated its relationship with Dragul and his entities on January 27, 2020.

The Receiver's underlying allegations have no merit. There is no factual basis for the Receiver's allegations that the Law Firm was involved in the active solicitation of SPE investor funds; that it was involved in SPE entity organization or securities work; that it was involved in commingling or reconciling SPE investor funds; that it served as a general counsel or tax advisor; that it represented 180+ SPE entities associated with Dragul, or the SPE investors; that it engaged in misleading SPE investor updates with respect to Plaza Mall Georgia or otherwise; that it provided conflicted counsel; that it received "Commissions" instead of fees; that it had some notice inquiry duty; or, that it interfered with the Receivership. The Law Firm completed much more substantive work than the fees it collected; it billed for its work in detail and contemporaneously; accounted for the application of any payments made; it provided Dragul and GDA RES with generous billing credits; and, was not involved in the internal accounting machinations of GDA RES or its related SPE entities.

Further, if the Receiver's theory is that the Law Firm somehow facilitated SPE account commingling by applying GDA RES or other client payments to a variety of outstanding GDA RES matters, is irrelevant because the Receiver chose to collapse all of the financials of the GDA RES related entities into one basket – in violation of the Receivership Order, and over the objections of the Law Firm. As such, the Receiver will be unable to establish liability. Even if the Receiver could establish some type of liability, it will be unable to establish actual damages to the Receivership Estate. The Law Firm has asserted additional responses and defenses in its Answer and Jury Demand.

d. Defendant Susan Markusch: Susan Markusch worked for GDA Real Estate Services LLC for over 20 years when the Receiver took over for Dragul and his entities. The Markusch defendants deny any wrongdoing in this case. In the Receivers attack against Mrs. Markusch it is noted that the receiver cannot demonstrate a Ponzi Scheme or coconspirator behavior. These allegations rely on extremely misleading information with no evidence to connect Mrs. Markusch to these allegations. The Receiver will not be able to meet its burden of proof for these claims.

e. The Hershey Defendants: The Hershey Defendants deny that they engaged in any wrongdoing. Their participation in the deals complained of by the Receiver was legitimate, and they did not defraud or commit securities violations

against the investors or anyone else. The Hershey Defendants also assert statute of limitations, and other legal defenses against the Receiver's claims.

5. Pending Motions

As of the date of this Proposed Case Management Order, the following motions are pending:

- a. Receiver's Motion to Dismiss the Conundrum Group's Counterclaims (filed on April 7, 2020)³; and
- b. Defendant Gary Dragul's Renewed Motion for Reconsideration of Order Denying and Motion to Dismiss First Amended Complaint (filed on May 27, 2021).

6. Evaluation of Proportionality Factors

Plaintiff: The parties believe that discovery should be limited to that which enables a party to prove a claim or defense and be proportional to the needs of the case in consideration of the proportionality factors listed in C.R.C.P. 26(b)(1). The discovery plan provided herein achieves that.

Defendant(s): The Defendants concur with the Plaintiff's statement, at least in principal.

7. Initial Exploration of Prompt Settlement and Prospects for Settlement

Plaintiff has explored settlement with several defendants since the filing of the complaint herein. Indeed, Plaintiff has entered into settlement agreements resulting in dismissal of three defendants herein (Alan Fox, ACF Property Management, Inc. and Juniper Consulting, LLC). The Receiver remains open to exploring settlement discussions with the remaining defendants. And, as set forth above and as advised during the Case Management Conference, the Receiver and the Kahn Defendants have reached an agreement resolving all of their respective claims against the other. The Parties are currently working on drafting a settlement agreement that must be submitted to the Receivership Court for approval.

³ This Motion will be mooted upon the Receivership Court's approval of the proposed settlement agreement between the Receiver and the Kahn Defendants.

8. Proposed Deadlines for Amendments

- a. Defendant Dragul's Deadline to Answer the First Amended Complaint: June 21, 2022.
- b. Amending or supplementing pleadings: August 5, 2022 (Not more than 105 days (15 weeks) from at issue date)
- c. Joinder of additional parties: August 5, 2022 (Not more than 105 days (15) weeks from at issue date)
- d. Identifying non-parties at fault: July 21, 2022 (90 days after case filed). As to Mr. Dragul, thirty (30) days after Mr. Dragul answers the Amended Complaint and the case is deemed at issue as to him, pursuant to the Court's April 20, 2020 Order granting Defendants' Unopposed Joint Motion for Extension of Time to File Nonparty at Fault Designations.

9. Disclosures

The Parties have not exchanged initial disclosures. The Parties propose exchange of disclosures on **June 30, 2022**.

10. Computation and Discovery Relating to Damages. If any party asserts an inability to disclose fully the information on damages required by C.R.C.P. 26(a)(1)(C), the proposed order shall include a brief statement of the reasons for that party's inability as well as the expected timing of full disclosure and completion of discovery on damages.

11. Discovery Limits and Schedule. For purposes of the below limits and schedule, and as otherwise used in this Order, "Side" shall mean and refer to each Party or group of aligned parties, for instance, the "Hershey Defendants" and the "Markusch Defendants" shall each be considered to be one "Side"; whereas Plaintiff and Mr. Dragul are each considered to be one "Side."

- a. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

The limitations on discovery provided for in C.R.C.P. 26 are proportional to the needs of this case.

- b. Number of depositions per Side:

Each Side will be limited to 10 depositions of fact witness not including depositions of parties and expert depositions pursuant to C.R.C.P. 26(a)(2).

- c. Number of interrogatories per Side (C.R.C.P. 26(b)(2)(B) limit of 30):

Each Side will be limited to 30 interrogatories. The Court will consider a motion to expand as appropriate under the circumstances.

- d. Number of requests for production of documents per Side (C.R.C.P. 26(b)(2)(D) limit of 20):

Each Side will be limited to 20 requests for production of documents.

- e. Number of requests for admission per party upon whom discovery is propounded. (C.R.C.P. 26(b)(2)(E) limit of 20):

Each Side will be limited to 20 requests for admission

- f. Any physical or mental examination per C.R.C.P. 35: N/A

- g. Custodian of Records Depositions and Subpoenas to Produce:

Each side shall be allowed to serve 15 non-party subpoena *duces tecum* or subpoenas to produce provided, however, copies of all subpoenas shall be provided to all counsel at the time of service and copies of any documents received in response to such discovery shall be provided to all other Parties within seven (7) business days of obtaining such discovery. The Parties agree and consent that any Party who has issued a subpoena *duces tecum* or a subpoena to produce to a non-party for the sole purpose of obtaining records of the non-party may, upon obtaining consent of the non-party, obtain the requested documents prior to the scheduled production date or date of the records deposition provided that the fourteen (14) day time period to object under C.R.C.P. 45 has expired and, upon receipt, cancel the deposition if necessary. Under such circumstances, the Party obtaining records shall disclose all documents obtained as a result of the subpoena *duces tecum* or subpoena to produce no later than seven (7) business days after obtaining such documents. Nothing in this section shall prevent a Party from taking a deposition

purely for the purpose of obtaining and authenticating records of a non-party.

- h. Any limitations on awardable costs: None.
- i. State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations:

In consideration of the proportionality factors in C.R.C.P. 26(b)(1), the Parties agree that the foregoing limitations on the scope and types of discovery are necessary, reasonable, and sufficient.

12. Expert Testimony

a. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II): Number of experts for each side shall be limited to 3 experts under C.R.C.P. 26(a)(2)(B)(I).

i. **Plaintiff**: Plaintiff anticipates submitting expert testimony under C.R.C.P. 26(a)(2)(B)(II) concerning solvency, accounting, forensic fraud examination, and quantification of damages Plaintiff reserves the right to retain rebuttal expert(s) to respond to Defendants' expert(s) if necessary.

ii. **Defendant Dragul**: Mr. Dragul anticipates submitting expert testimony under C.R.C.P. 26(a)(2)(B)(II) concerning solvency, accounting, forensic fraud examination, legal malpractice, receiverships and management thereof, damages causation, and damages quantification. Mr. Dragul reserves the right to retain rebuttal expert(s) to respond to the Receiver's experts as necessary.

iii. **The Kahn Defendants**: The Kahn Defendants anticipate experts in attorney standard of care and forensic accounting. The Kahn Defendants reserve the right to retain rebuttal experts to respond to the Receiver's experts.

iv. **Defendant Markusch**: Ms. Markusch anticipates expert testimony in forensic accounting, legal malpractice, Receivership management there of including but not limited to attorney standard of care and forensic accounting. Ms. Markusch reserves the right to retain rebuttal experts to respond to the Receiver's experts.

v. **The Hershey Defendants** The Hershey Defendants may offer expert testimony in the areas of forensic accounting, securities law, and real estate.

b. If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side: N/A.

13. Proposed Deadlines for Expert Disclosures.

Proposed deadlines for expert witness disclosure if other than those in C.R.C.P. 26(a)(2): No modification to deadlines under Colo. R. Civ. P. 26(a)(2).

a. Production of expert reports:

- i. **Plaintiffs:** January 2, 2023 (*i.e.*, 18 Weeks before Trial)
- ii. **Defendants:** January 30, 2023 (*i.e.*, 14 weeks before trial)

b. **Production of Rebuttal Expert Reports:** February 20, 2023 (*i.e.*, 11 Weeks before Trial)

c. Production of Expert Witness Files:

- i. For principal experts, expert witness files to be produced no later than one week after expert reports have been produced.
- ii. For rebuttal experts, expert witness files to be produced at the time of disclosure of experts.

13. Oral Discovery Motions

If there is a discovery dispute, counsel are expected to confer in a meaningful way to try to resolve it, in whole or in part. That is, if a discovery dispute arises, counsel for each side are expected to initiate efforts to confer long enough before the filing of a discovery motion, if necessary, (as set forth below) to enable two-way communication. Certification that a telephone call, e-mail, or other form of written communication was directed to opposing counsel fewer than 24 hours before the pleading was filed and that “no response was received” is not a good faith effort to confer. The Court’s preference is that such conferrals be made either in-person, to the extent practicable, or via telephone conference. A letter or e-mail message is deemed by the Court to be “notice,” but not a sufficient attempt to confer. If attempts to confer are unsuccessful the certification in any written or oral discovery motion must describe in detail the attempts counsel made to do so.

The Court expects that counsel will conduct themselves in a civilized professional manner and will treat jurors, parties, witnesses, Court staff and one another with courtesy and respect at all times.

If the parties need immediate resolution of a discovery issue, and if the issue is relatively discrete, including one that arises during a deposition, they are encouraged to call the Court at (303) 606-2429, and every effort will be made to hear the matter orally and immediately via telephone or WebEx, or on as expedited a basis as possible.

If the dispute cannot be resolved informally or by expedited oral motion, a brief motion, no more than 3 pages in length, should be submitted to the Court, including certification of compliance with C.R.C.P. 121 § 1-15(8). A response may be filed no later than 7 days from the date of service, also limited to 3 pages. No reply will be permitted absent leave of Court.

The Court will assess the motion and will either rule on the motion or notify the parties that a hearing is required. The Court will set any required hearing as quickly as possible. If counsel cannot agree on a date, please let the Court’s staff know and the Court will set the hearing date.

14. Electronically Stored Information

The parties **do** anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs:

The parties anticipate significant discovery of electronically stored information. The parties will confer over ESI issues as they arise and the preparation of an ESI protocol which will be submitted to the Court for final approval.

The production of privileged or work-product protected documents, ESI or other information, whether inadvertently or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Case Management Order shall be interpreted to provide the maximum protection allowed by Colorado Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production

15. Trial Date and Estimated Length of Trial

a. **Trial**: The parties have scheduled with the Court, a four (4) week jury trial to commence on **May 8, 2023** at **8:30 a.m.** in courtroom 414.

b. **Discovery Deadline**. All discovery shall be completed seven (7) weeks prior to trial, or by **March 20, 2023**

c. **Pre-Trial Conference**: The pre-trial conference in this case shall be held on **March 31, 2023** at **12:15 p.m.** in person, in courtroom 414.

16. Other Appropriate Matters

As referenced above in section 2(f), Defendant Olson Real Estate is currently not represented by counsel. On September 3, 2021, counsel for Defendants Olson Real Estate and Markusch filed a Notice Motion for Leave to Withdraw, which was granted by the Court on October 21, 2021. Defendant Markusch has proceeded *pro se* herein including *inter alia*, responding to undersigned's recent conferral requests for the recently-held status conference, but failing to appear or participate in the status conference. Defendant Olson Real Estate, however, has failed to retain new counsel. Pursuant to C.R.S. § 13-1-127, a business entity may not appear in court

unless it is represented by counsel. Therefore, Plaintiff anticipates filing a motion for entry of default judgment against Olson Real Estate.

Per the Court's directive at the May 27, 2022 Case Management Conference, Olson Real Estate Services shall retain new counsel, who shall enter an appearance in this matter no later than June 30, 2022. Ms. Markush, an individual, is free to proceed herein *pro se* if she so desires, but Olson Real Estate, an entity, must be represented by counsel as set forth herein above. If no attorney has entered an appearance in this case for or on behalf of Olson Real Estate on or before June 30, 2022, the Receiver shall be entitled to file a motion for default as to Defendant Olson Real Estate.

Ms. Markusch states that Per the Court's directive, she and Olson Real Estate will hire legal counsel on or before June 30, 2022.

Dated this 3rd day of June 2022.

Attachment to Order - 2020cv00055

Respectfully Submitted,

<p>ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.</p> <p>By: <u>s/ Rachel A. Sternlieb</u> Patrick D. Vellone, #15284 Rachel A. Sternlieb, #51404 1600 Stout Street, Suite 1900 Denver, Colorado 80202 Phone (303) 534-4499 pvellone@allen-vellone.com rsternlieb@allen-vellone.com</p> <p><i>Counsel for the Plaintiff</i></p>	<p>JONES & KELLER, P.C.</p> <p>By: <u>/s Christopher S. Mills</u> Paul L. Vorndran Christopher S. Mills 1675 Broadway, 26th Floor Denver, Colorado 80202 pvorndran@joneskeller.com cmills@joneskeller.com</p> <p><i>Counsel for Defendant, Gary Dragul</i></p>
<p>GORDON REES SCULLY MANSUKHANI, LLP</p> <p>By: <u>/s Margaret L. Boehmer</u> John M. Palmeri Margaret L. Boehmer 555 17th Street, Suite 3400 Denver, CO 80202 jpalmeri@grsm.com mboehmer@grsm.com</p> <p><i>Counsel for Defendants Benjamin Kahn and the Conundrum Group, P.C.</i></p>	<p>GOODREID AND GRANT, LLC</p> <p>By: <u>/s Thomas E. Goodreid</u> Thomas E. Goodreid #25281 Paul M. Grant #26517 7761 Shaffer Parkway, Suite 105 Littleton, CO 80127 t.goodreid@comcast.net pgrant@goodreidgrant.com</p> <p><i>Counsel for Defendants, Marlin Hershey and Performance Holdings, Inc.</i></p>
<p>By: <u>s/ Susan Markusch</u> Susan Markusch 6321 South Geneva Circle Englewood, CO 80111 smarkusch19@gmail.com</p> <p><i>Pro se</i></p>	

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the Court, is and shall be the Case Management Order in this case.

Dated this ____ Day of _____, 2022.

BY THE COURT:

Hon. Ross Buchanan, District Court Judge

Attachment to Order - 2020CV30255