

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p>DATE FILED: April 22, 2024 2:22 PM FILING ID: 25294227B654F CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiff:</b> Tung Chan, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Averil K. Andrews, # 56148 ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 pvellone@allen-vellone.com mgilbert@allen-vellone.com aandrews@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;"><b>RECEIVER’S REPLY TO CHAD HURST’S OBJECTION TO RECEIVER’S SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES</b></p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, Inc. (“GDAREM”), and related entities (collectively, “Dragul and the GDA Entities”), hereby responds to Chad Hurst’s Objection to Receiver’s Settlement Agreement with Clearwater Bankruptcy Estates (“**Hurst Obj.**”, filed April 16, 2024).

## **I. Hurst seeks to profit from Dragul's fraud.**

1. Hurst is Dragul's long-time friend and what Dragul has described as a "friend of the house." As a friend of the house, Dragul paid Hurst preferred returns and provided him with additional benefits not afforded to Dragul's other defrauded investors. Hurst's engagement with Dragul has continued unabated since the Receiver was appointed in August 2018. Hurst has funded Dragul's legal fees in defending against Dragul's criminal indictments, he has entered into undisclosed agreements with Dragul concerning the Clearwater entities, and has even funded a portion of Dragul's criminal restitution payments.

2. In exchange, and to conceal Dragul's continued involvement, Dragul apparently transferred his purported equity interest in the Clearwater entities to Hurst. Despite requests, Hurst has refused to disclose his agreements with Dragul concerning Clearwater or otherwise.

3. For a decade, Hurst and his wife invested \$7,615,113.91 with Dragul. Only \$150,000 was invested in Clearwater; \$987,113.91 was invested in other SPEs. Hurst loaned Dragul a total of \$6,478,000.00; he even loaned Dragul \$1,150,000.00 *after* Dragul was indicted on nine felony counts in April 2018. Before the Receiver was appointed, Dragul paid Hurst \$6,390,611.25, providing Hurst with a total recovery of about 84% of the money he invested.

4. From the \$150,000 Hurst invested in Clearwater, Dragul paid him preferred returns of \$90,230.78, 60% of his investment compared to 31% of similarly situated investors. Dragul paid some investors in his scheme much less, some recovering as little as 5%.

5. In an effort to conceal his continued control over and involvement in the Clearwater estate, on April 26, 2022, Dragul granted Hurst a power of attorney and appointed Hurst the manager of the Clearwater entities that Dragul had put into bankruptcy. Although Hurst invested only \$150,000 in Clearwater and lost only \$59,769.22, he has filed claims seeking to recover \$1,338,244.26 from the Clearwater bankruptcy estates, which would provide him a recovery of \$110,000 more than his total losses with Dragul, which was \$1,224,502.66. So Hurst seeks to profit from Dragul's fraud.

## **II. Hurst mischaracterizes the settlement agreement.**

### **A. The proposed Settlement Agreement will increase distributions to both Clearwater and other Receivership claimants.**

6. Hurst either misapprehends the effect of the Settlement Agreement, or deliberately mischaracterizes it. He incomprehensibly argues the effect of the Settlement Agreement is to take \$500,000 from some claimants in the Receivership Estate and transfer that \$500,000 to other claimants in the Receivership Estate, leading to no overall benefit to the Receivership claimants, and then suggests that the Receiver and his counsel would take a contingency cut of that \$500,000. Hurst Obj. at 2, 10. Hurst is simply wrong.

7. The settlement agreement provides for the payment of \$500,000 to the Receivership Estate, which will increase the balance in the Estate by \$500,000. The \$500,000 payment is not subject to any contingent fee payable to the Receiver's professionals. In addition, all investors in Clearwater will receive substantial distributions from the Clearwater bankruptcy estates, whether or not they filed

claims in the bankruptcy cases. Those distributions will afford losing Clearwater investors with recoveries of between 73% and 100% of their Clearwater losses. Under the Receiver's proposed rising tide plan of distribution, the effect of this will be to increase distributions to non-Clearwater investors in the Receivership Estate. It is not as Hurst argues taking "funds from one pool of money to pay claimants and transfer[ing] those funds to his own pool of money to pay the very same claimants." Hurst Obj. at 9. The increase in distributions to Receivership investors is plainly in the *Receivership Estate's* best interest. Hurst's real – but unstated – objection is that the settlement agreement will leave less in the Clearwater estate to distribute to him. Hurst has no interest in protecting the defrauded investors in the Receivership Estate, he simply seeks to line his own pockets at the expense of those claimants.

8. Hurst also objects on the ground that the Receiver abandoned the estate's equity interest in the Clearwater property, and should not be rewarded for ignoring this Court's abandonment order. Hurst Obj. at 1, 2, 6, 7, 8, 12. The Receiver's claims in the Clearwater bankruptcy were not an attempt to "swoop" back in to the Clearwater cases and recovery equity because there was and is no "equity" in Dragul's scheme, of which Clearwater was part and parcel, as evidenced by Dragul's second indictment, and his subsequent guilty plea to it in which he admitted to defrauding Clearwater investors. The Receiver's claims in Clearwater were not based on claimed "equity," but instead on debt based on losses suffered by Clearwater investors, and in large part on fraudulent transfers Dragul made into the Clearwater entities at the expense of other Receivership Entities and investors.

9. It is indisputable that the approval of the Settlement Agreement achieved through the Receiver's efforts will increase the recovery of both Clearwater investors through the Clearwater bankruptcy estates and to non-Clearwater investors in the Receivership Estate, which is plainly in the best interest of all creditors.

**B. The limited release provision in the settlement agreement is reasonable and appropriate.**

10. Hurst again mischaracterizes and misquotes the Settlement Agreement as containing broad releases of *any* claims that might be asserted by *any* investor or claimant in the Receivership against the Receiver or the Receivership Estate, including claims for "malfeasance in administering the Receivership." Hurst Obj. at

12. The settlement agreement provides, however, that:

The Receiver, acting on behalf of the Sender Receivership, hereby releases any and all claims and causes of action of any nature against the Investors arising out of or related to their interest in the Debtors or the Liquidating Trust or any distributions made on account of those interests, and any claim of those Investors against the Sender Receivership Estate arising from their investments in the Debtors are hereby released.

Settlement Agreement ¶ 7 (attached to the Receiver's Motion as Exhibit 1).

11. "Investors" is defined as only "the investors of Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC." *Id.* ¶ 6. So the release provision is extremely limited: it releases any claims the Receiver might have against the Clearwater Investors arising from their interests in the Clearwater entities, and the Clearwater Investors release their claims against the Receivership Estate arising *only* from their Clearwater investments. All of the Clearwater investors will receive between 73%

and 100% of their original investments in the Clearwater entities, a substantially greater payout on those investments than will be provided under the Receiver's contemplated rising tide distribution plan. The Plan is not currently before the Court but will be filed and sent out on notice to all parties-in-interest after the \$500,000 payment is received from the Clearwater settlement.

**III. Despite Hurst's self-interested objection, the Settlement Agreement is in the best interest of the Estate and its creditors.**

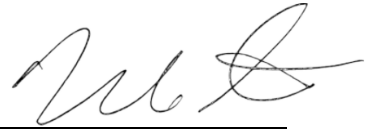
12. Hurst is the only Receivership creditor that has objected to the proposed Settlement Agreement, and his objection is solely to advance his own self-interest at the expense of all other creditors. The proposed settlement will result in an additional \$500,000 being distributed to the Receivership creditors and substantially greater recoveries by the Clearwater investors, which is plainly in the best interests of all creditors. Hurst, working with Dragul, just seeks to keep a bigger piece of the pie. His objection should be denied, and the Motion to Approve the Settlement Agreement approved.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Settlement Agreement.

Dated: April 22, 2024.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.

By: s/ Michael T. Gilbert



Patrick D. Vellone, Reg. No. 15284

Michael T. Gilbert, Reg. No. 15009

Averil K. Andrews, Reg. No. 56148

ATTORNEYS FOR THE RECEIVER, HARVEY  
SENDER

**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2024, I served a true and correct copy of the foregoing **RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES** via CCE to:

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**CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS**

In accordance with this Court’s February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver’s records.

/s/ Yvonne Davis  
Allen Vellone Wolf Helfrich & Factor P.C.