DISTRICT COURT, DENVER COUNTY **STATE OF COLORADO** 1437 Bannock St. Denver, CO 80202 303-606-2433	DATE FILED: June 24, 2024 10:11 PM FILING ID: 468ED9D091154 CASE NUMBER: 2018CV33011
Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado v. **Defendants**: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	▲ COURT USE ONLY ▲
Attorney for Investor/Creditor/Claimant Chad Hurst Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1675 Broadway, 26th Floor Denver, CO 80202 Phone: 303-573-1600 Email: cmills@joneskeller.com	Case No. 2018CV33011 Courtroom: 424

CHAD HURST'S RESPONSE TO LONE PINE'S JOINDER & SUPPLEMENT IN RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES

In its May 16, 2024 Joinder in Receiver's Motion to Approve Settlement Agreement with Clearwater Bankruptcy Estates and Receiver's Opposition to Objection by Chad Hurst ("Joinder"), creditor Lone Pine Resource, LP ("Lone Pine") asserted that the Receiver's proposed Settlement[1] with the Clearwater Bankruptcy Estates "provides it with the best opportunity to recover sums of money of which it has been defrauded" (Joinder ¶ 3) and is in the best interests of creditors (*id*. ¶ 4), but does not explain why. In its June 3, 2024 Supplement to its Joinder ("Supplement"), Lone Pine also does not explain why the proposed Settlement would

[1] Capitalized terms have the same meaning as in Mr. Hurst's April 16, 2024 Objection.

be advantageous for it let alone for the other creditors, instead parroting the Receiver's ad hominem attacks against Mr. Hurst (and undersigned counsel).

Lone Pine argues that Hurst objects to the proposed Settlement solely to advance his own self-interest, at the expense of all the other creditors. (Joinder ¶ 5(c); Supplement ¶¶ 1, 3.) It seems to believe that it will recover more money under the proposed Settlement than without it. In fact, the proposed Settlement works to the detriment of all Clearwater investors, including Lone Pine, for several reasons.

First, the proposed Settlement reduces the amount available for claimants in the Bankruptcy Proceedings, such as Lone Pine, by $500,000. The $500,000 Settlement payment from the Bankruptcy Estates to the Receivership Estate will (minus the Receiver's, his attorneys', and his accountants' fees) be distributed *only* to *non-Clearwater* investors in the Receivership Estate. (Receiver's April 22, 2024 Reply to Chad Hurst's Objection to Receiver's Settlement Agreement With Clearwater Bankruptcy Estates ("Receiver's Reply") ¶ 7 (stating that the effect of the Settlement "will be to increase distributions to non-Clearwater investors in the Receivership Estate."); ¶ 9 (stating that the settlement "will increase the recovery of both Clearwater investors through the Clearwater bankruptcy estates and to non-Clearwater investors in the Receivership Estate[.]").) This appears to be part of what the Receiver intended by the language in Paragraph 7 of the proposed Settlement that provides that "any claim of those Investors against the Sender Receivership Estate arising from their investments in the Debtors are hereby released." (Settlement Mot. Ex. 1 at ¶ 7.) Indeed, in his Reply, the Receiver says that under this language "the Clearwater Investors release their claims against the Receivership Estate arising *only* from their Clearwater investments." (Receiver's Reply ¶ 11 (emphasis in original).)

Thus, the only source of recovery for Clearwater investors is the Bankruptcy Estates, not the Receivership Estate.

If the Clearwater investors will recover for their Clearwater investments only from the Bankruptcy Estates and not from the Receivership Estate, and the $500,000 Settlement payment will only be distributed to *non-Clearwater* investors in the Receivership, that means the Clearwater investors will receive less of a recovery under the Settlement. Under that Settlement, the Bankruptcy Estates—which are the only source of recovery for the Clearwater investors—will be diminished by the $500,000 Settlement payment. The Receiver effectively admits this, stating that "Hurst's real – but unstated – objection is that the settlement agreement will leave less in the Clearwater estate to distribute to him." (Receiver's Reply ¶ 7.) Indeed, it leaves $500,000 less in the Bankruptcy Estates not only for Mr. Hurst, but also for all the other Clearwater investors, *including Lone Pine*. While non-Clearwater investors in the Receivership may receive a windfall from that $500,000 at the expense of Clearwater investors, that works to Lone Pine's detriment, not benefit.

Second, the Bankruptcy Estates have already been depleted, and will be further depleted, by the Trustee's fees incurred first fighting with the Receiver over claims the Receiver was barred by the Abandonment Clarification Order from asserting in the first place, and then for work on the Settlement agreement. Based on the Trustee's latest filing, he has spent over $122,000 on legal counsel and over $105,000 on himself since being confirmed. While the Trustee has not disclosed the purpose of these billings, given the volume of the Receiver's bankruptcy filings and claims, the Trustee's required responses, and the six months spent on the proposed Settlement, the bulk of those fees were almost assuredly incurred because of the

Receiver's intrusion into the Bankruptcy Proceedings. Those fees are paid out of the Liquidating Trust Estate; i.e., from the funds from which Clearwater investors will recover. Every dollar the Trustee spent dealing with the Receiver reduces the recovery of Clearwater investors such as Lone Pine, adding to the $500,000 loss that claimants in the Bankruptcy Proceedings will suffer from the proposed Settlement.

Third, even if Lone Pine filed claims in the Receivership Estate related to investments other than in Clearwater, and thus might have a chance to benefit from the $500,000 windfall to non-Clearwater investors that the Settlement payment represents, that windfall is substantially smaller than it appears. Neither Lone Pine nor the Receiver attempt to quantify the amount of windfall the non-Clearwater investors would receive by eliminating the claims of Clearwater investors in the Receivership. Nor do they address why the Receiver could not disallow the Clearwater investors' claims in the Receivership to the extent they already recovered in the Bankruptcy Proceedings, without need for the proposed Settlement. In any event, as Mr. Hurst noted in his April 16, 2024 Objection, as of late November 2023, the Receiver, his attorneys, and his accountants billed the Receivership Estate fees of approximately $141,077 related to the Clearwater bankruptcies—which does not include the fees inevitably incurred since that date. (Obj. 10-11 & Obj. Ex. F.)[2] Under the proposed Settlement, non-Clearwater investors get a small unspecified windfall, and the Receiver and his agents receive substantial fees, all at the expense of Clearwater investors like Lone Pine and Mr. Hurst.

[2] The Receiver asserts that Mr. Hurst said that the Receiver's attorneys would receive a cut of the $500,000 through a contingency fee in order to argue there is no contingency fee arrangement. (Receiver's Reply ¶ 6-7.) This is a strawman. Mr. Hurst never suggested the Receiver's attorneys' cut was via a contingent fee, and that word never appears in Mr. Hurst's Objection. Rather, their cut comes through hourly fees billed to the Estate. (Obj. 10-11 & Obj. Ex. F.)

And claimants who filed both Clearwater claims and non-Clearwater claims do not receive any windfall. The $500,000 to fund that windfall comes out of the pockets of Clearwater claimants, like Lone Pine, from the Bankruptcy Estates. If Lone Pine filed both Clearwater and non-Clearwater claims in the Receivership, it is effectively paying itself the windfall it receives on the non-Clearwater claims, minus the Receiver's cut.

Moreover, as Mr. Hurst noted in his Objection, the Settlement transfers money from one group of Receivership claimants (those who filed claims both in the Receivership and Bankruptcy Cases) to another group of Receivership claimants (those who only filed non-Clearwater claims in the Receivership), leading to no net benefit for the Receivership claimants overall. (Obj. 10.) In fact, the Receivership claimants collectively receive *less* money under the proposed Settlement because the Receiver and his agents first take their fees. Only the Receiver benefits from the Settlement.

This is representative of the entire Receivership. Interestingly, in his most recent May 30, 2024 Ninth Report, the Receiver did not identify the total amount of claims filed in the Receivership, the total amount he recovered and placed into the Receivership Estate for distribution to claimants, or the amounts he, his attorneys, and his accountants have billed the Estate, even though he identified those amounts in all of his previous reports. In his December 20, 2023 Eighth Report, the Receiver noted that 261 investors filed claims totaling approximately $58 million, of which he believes about $25 million are allowable. (Eight Report ¶ 24.) Additionally, one investor, Hagshama, filed claims for over $100 million, of which the Receiver believes about $8.2 million is allowable, and secured lenders filed claims for approximately $105 million, the majority of which the Receiver believes have been satisfied or

reduced by the Receiver's sale of properties. (*Id*.) And third-party vendors filed claims for approximately $4.8 million. (*Id*.) Using only the amounts the Receiver believes are allowable and ignoring completely the $105 million of secured lender claims (both of which assuredly understate the amount), there would be at least $38 million in claims.

The remaining Receivership assets are an $850,000 settlement payment expected in October from Gary Dragul, uncollectable judgments from Marlin Hershey and his company, Performance Holdings, Inc.,[3] and $1,510,143.30 remaining in the Receivership account. (*Id*. ¶¶ 9, 11.) Combined, that is $2,360,143.30. Thus, using the most conservatively low amount of claims possible, and giving the Receiver the benefit of a settlement payment he has not yet received, the claimants would recover only about 6% of their claims. This likely partly explains why the Receiver wants the Settlement approved. It would increase the amount in the Receivership Estate (at the expense of the Bankruptcy Estates), but also would kick out all the Clearwater investors' claims from the Receivership, improving the apparent percentage recovery for the claimants who remain.

[3] The Receiver noted that the "collectability of the judgment entered against Mr. Hershey and Performance Holdings is unknown." (Eighth Report ¶ 12.) He further notes that Mr. Hershey is serving time in a federal prison. (Ninth Report ¶ 7.) Notably, in his Ninth Report, the Receiver states that he cannot submit his proposed distribution plan until the Clearwater settlement issues are resolved, but does not suggest that collecting the judgments from Hershey or Performance Holdings is delaying distributions (Ninth Report ¶ 22), suggesting that he knows the judgments are uncollectible. Indeed, Hershey's and Performance Holding's attorneys withdrew well before trial because they had not been paid for months. (Ex. A at ¶ 4; Ex. B at 2.) Hershey then proceeded to trial *pro se* and Performance Holdings did not appear at all. (Ex. C.) It is unclear why the Receiver spent hundreds of thousands of dollars proceeding to a 6-day jury trial to obtain judgments against defendants who could not even afford counsel to defend themselves, one of whom was about to report to federal prison.

Worse, as of November 30, 2023, the Receiver, his attorneys, and his accountants have billed the Receivership Estate $4,025,674.10, which does not include the substantial amount they billed since then. Again, giving the Receiver the benefit of a settlement payment he has not yet received, Mr. Sender and his agents have already paid themselves almost $2 million more than all the claimants combined would recover.

On November 14, 2019, early in the Receivership, the Receiver filed his Third Report. In it, the Receiver reported that he had received $2,643,599.26 from sales of commercial property (Third Report ¶ 22), $189,043.90 from sales of residential properties (*id*. ¶ 23), $1,878,020.86 in rental income and $210,548 in distributions (*id*. ¶ 27), and $170,525 in settlement payments (*id*. ¶ 34), for a total received of $5,091,737.02. (And that number did not include the Receiver's anticipated $93,367 from pending residential property sales, $370,000 estimated from liquidating remaining residential properties, additional anticipated settlement payments, or other commercial properties the Receiver had yet to sell (*id*. ¶¶ 22, 23, 26, 34).) At that time, the Receiver had already billed the estate $1,219,008.98 in fees for himself, his attorneys, and accountants, and was seeking $1,328,666.54 more, for a total of $2,547,675.52 in fees. (*Id*. ¶¶ 42 & 43.) Excluding amounts the Receiver anticipated but had not yet obtained, and excluding the value of the properties he still held, and assuming all his fees were legitimate, that should have meant the Receiver had $2,544,061.50 available to distribute to claimants if he had simply stopped at the time of his Third Report and distributed the funds available. That is more than the Receiver has available to distribute now, even though the Receiver has billed the Estate nearly $1.5 million more since then.

Lone Pine may also be unaware of another way the Receiver negatively impacted its recovery. Lone Pine had invested in GDA Clearwater 15, LLC and had received regular distributions of profit from the Shopping Center prior to 2018. But after the Receiver was appointed that year, he transferred over $500,000 out of GDA Clearwater 15, LLC and into GDA Real Estate Management, LLC, without consideration. Without notice and an opportunity for Line Pine or the other GDA Clearwater 15, LLC investors to object, the Receiver converted the funds in which they held rights to an entity in which they did not. Instead of being one of nineteen investors entitled to a $70,000 distribution from the over $500,000 held by GDA Clearwater 15, LLC in 2018, Lone Pine got no distribution because the Receiver took those funds and spent them.

Finally, Lone Pine may believe it will see a larger recovery because the Receiver's proposed Settlement seeks to treat a single Clearwater investor—Mr. Hurst—differently than all the others by precluding him from recovering on his Clearwater investment from either the Receivership Estate or the Bankruptcy Estates. But the amount the Bankruptcy Estates save by excluding Mr. Hurst will be offset by the amount they lose with the $500,000 Settlement payment to the Receiver and the Trustee's fees wasted on the Receiver's claims made in contravention of the Abandonment Clarification Order.

Not to mention the due process concerns and fundamental unfairness of denying any recovery to the one person—Mr. Hurst—who is solely responsible for investors being able to recover anything from the Clearwater Entities and Shopping Center. Apparently, Lone Pine is

not troubled by this unfairness. Parroting the Receiver's ad hominem attacks,[4, 5] Lone Pine seems to believe that Mr. Hurst is a bad person because he did not shun Mr. Dragul following the indictments, and continued to communicate with Mr. Dragul to get critical information about the Shopping Center, its rents and leases, etc. Lone Pine argues that Mr. Hurst "seeks to ensure that Hurst recovers even more ***(perhaps even a profit!)***—on the backs of the innocent defrauded creditors and victims." (Supplement ¶ 1 (emphasis in original).) These ad hominem attacks are a wholly irrelevant attempt to avoid confronting that the proposed Settlement harms all the Clearwater investors, not just Mr. Hurst.

They are also false. Mr. Hurst is the sole reason that $6 million is now available for distribution to Clearwater claimants. In fact, it is extremely rare for any investors to recover from a bankruptcy proceeding, as creditors usually eat up all the remaining assets first; yet this is what Mr. Hurst accomplished. Mr. Hurst relied on the Court's Abandonment Clarification Order, and through considerable time and by spending over $300,000 out of pocket, he stopped

[4] It is unclear why the Receiver believes he can make such assertions and use them as a basis to try to deprive Mr. Hurst a recovery. The Receiver is neither judge nor jury, and no court has ever suggested, let alone held, that any of Mr. Hurst's dealings are in any way questionable.

[5] Lone Pine and the Receiver also attempt to impugn Mr. Hurst because his counsel previously represented Gary Dragul in this proceeding. (Joinder ¶ 5; Supplement ¶ 3; Ninth Report ¶¶ 18-19.) Neither Lone Pine nor the Receiver explain what relevance this has, but they clearly imply something nefarious. It is unclear why. Since undersigned counsel previously represented Mr. Dragul in this same proceeding until recently, he required substantially less time (and less in fees to Mr. Hurst) to get up to speed on the case. He also drafted the pleadings that resulted in the Abandonment Clarification Order. It made sense for Mr. Hurst to hire undersigned counsel. Additionally, Lone Pine asserts that "one of the attorneys for Hurst is the same lawyer and law firm that represented Dragul during his criminal proceedings." (Joinder ¶ 5.) That is incorrect. While another attorney from undersigned counsel's firm (among other attorneys from different firms) represented Mr. Dragul in the criminal proceedings, undersigned counsel never entered an appearance in those criminal cases or any other criminal cases. And the attorney from undersigned counsel's firm who did represent Mr. Dragul in those criminal cases does not represent Mr. Hurst here.

the lender from defrauding investors, continued to put the Clearwater Entities through bankruptcy, and found a purchaser for their only asset (the Shopping Center) after the Receiver abandoned it because the Receiver thought it was of inconsequential value. But for Mr. Hurst's efforts and money, Lone Pine's and the other Clearwater investors' recovery from the Shopping Center would be zero. Mr. Hurst is not seeking personal gain "on the backs of innocent defrauded creditors and victims." Instead, he created $6 million for their benefit. Yes, Mr. Hurst continued to work with Mr. Dragul to increase Mr. Hurst's ownership interest in the Clearwater Entities and Shopping Center after the Receiver abandoned them. Lone Pine should be glad he did, as that is the only reason Lone Pine can now share in $6 million in the Bankruptcy Estates.

Lone Pine never mentions this Court's Abandonment Clarification Order, which, if the Receiver had respected it, would have meant more money in the Bankruptcy Cases to distribute to claimants like Lone Pine. Lone Pine no doubt relied on the Receiver's explanation, but the Receiver's brief mention of the Abandonment Clarification Order in his Reply does not appear to make sense. He first argues that he is free to ignore the Court's Order because he is not attempting "to 'swoop' back into the Clearwater cases and recover equity because there was and is no 'equity' in Dragul's scheme[.]" (Receiver's Reply ¶ 8.) But he admits there is approximately $6 million in the Bankruptcy Estates from the sale of the Shopping Center and money from a tenant (Settlement Mot. ¶¶ 11, 13), proving there very much was equity in the Clearwater Property—sale price of the asset minus the debt of the asset = the equity of the asset. He also argues that his claims in the Bankruptcy Cases are not based on 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." (Receiver's Reply ¶ 8.) He does not explain or support why his supposed claims are based on debt and not equity. And even if true, the Receiver cites no authority, let alone explains, why this would give him standing to assert claims in the Bankruptcy Proceedings. Moreover, the Receiver conflates the basis for his claims (supposed "debt") with the asset from which he hopes to recover for those claims (the equity). The Abandonment Clarification Order removed the Clearwater Entities and Shopping Center from the assets the Receiver could reach. (Obj. 4, 6-8.) Thus, it would not matter if the Receiver had any standing—the Clearwater Entities and Shopping Center are not among the assets from which he can recover regardless of what claims he tries to assert.

Mr. Hurst detrimentally relied on the Abandonment Clarification Order meaning what it says when he (1) acquired a larger interest in the Clearwater Entities at great expense, and (2) spent considerable time and over $300,000 to recover $6 million from the Shopping Center for distribution to Clearwater claimants. Those claimants—including not only Mr. Hurst but also Lone Pine—would see a substantially larger recovery if the Receiver respected the Court's Abandonment Clarification Order and there were no Settlement. And had the Receiver never interfered in the Bankruptcy Proceedings in violation of the Abandonment Clarification Order, both the Receivership Estate and Bankruptcy Estates might already have been distributed to claimants.

CONCLUSION

Lone Pine's anger is understandable, but it is misdirected toward Mr. Hurst, who is the only reason there is now $6 million available to distribute to Clearwater claimants such as Lone Pine. Under the Settlement, money is taken from the pockets of the Clearwater investors such as

Lone Pine and Mr. Hurst, and is transferred to the Receiver, his accountants, and his attorneys, with the remainder going to Receivership claimants who had nothing to do with Clearwater. All of the Clearwater investors—*including Lone Pine*—end up substantially worse off under the proposed Settlement than without it.

DATED this 24th day of June, 2024.

JONES & KELLER, P.C.

/s/ Christopher S. Mills

Christopher S. Mills, #42042
1675 Broadway, 26th Floor
Denver, CO 80202
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ATTORNEY FOR INVESTOR/CREDITOR/CLAIMANT CHAD HURST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CHAD HURST'S RESPONSE TO LONE PINE'S JOINDER & SUPPLEMENT IN RECEIVER'S SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES** was filed and served via the CCE e-file system on this 24th day of June, 2024 to all counsel of record for the parties to the action, including the following:

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Counsel for Tung Chan, Securities Commissioner for the State of Colorado

/s/ Christopher S. Mills
Christopher S. Mills

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	DDAATTEE FFIILLEEDD: June 24,7, 20243 16:39 PM FFIILLIINNGG IIDD: 4687905403B A954BB CCAASSEE NNUUMMBBEERR: 20280CV30255
Plaintiffs: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC vs. Defendants: GARY DRAGUL; BENJAMIN KAHN; THE CONUNDRUM GROUP, LLP; SUSAN MARKUSCH; ALAN C. FOX; ACF PROPERTY MANAGEMENT, INC.; MARLIN S. HERSHEY; PERFORMANCE HOLDINGS, INC.; OLSON REAL ESTATE SERVICES, LLC; JUNIPER CONSULTING GROUP, LLC; JOHN AND JANE DOES 1-10; and XYZ CORPORATIONS 1-10	▲**COURT USE ONLY** ▲
Counsel for Defendants Performance Holdings, Inc. and Marlin Hershey Thomas E. Goodreid, #25281 Paul M. Grant, #26517 Goodreid & Grant LLC 1801 Broadway, Suite 1400 Denver, Colorado 80202 Phone: 303-296-2048x136 (Goodreid) Phone: 720-810-4235 (Grant) E-mail: *t.goodreid@comcast.net* E-mail: *pgrant@goodreidgrant.com*	Case Number: 20CV30255 Courtroom: 414

RENEWED MOTION (UNOPPOSED) TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS

Thomas E. Goodreid and Paul M. Grant, counsel for Defendants Performance Holdings, Inc. ("PHI") and Marlin Hershey (collectively the "Hershey Defendants"), pursuant to C.R.C.P. 121 § 1-1(2)(b), again request an Order permitting their withdrawal, stating as follows.

1. On 1 June 2023 the undersigned previously moved to withdraw as counsel for the Hershey Defendants. The basis for that motion, *inter alia*, was that "Colorado Rule of Professional Conduct 1.16(b) states, in relevant part, that 'a lawyer may withdraw from representing a client if: . . . (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services . . . [or] (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client."' The undersigned renew these bases for the motion to withdraw.

2. Plaintiff's counsel objected to the earlier motion to withdraw, for two reasons: a) Plaintiff wanted Mr. Hershey's deposition scheduled and taken before the undersigned withdrew and b) Plaintiff did not want the potential withdrawal of the undersigned to become cause for the fall trial date to be moved in the event that Mr. Hershey retained new counsel. The Court held a hearing on the original motion to withdraw on 15 June 2023. Evidently sensitive to the points raised by Plaintiff, the Court denied the motion to withdraw.

3. In doing so, however, the Court stated that the fall trial date would not be continued for any reason. The Court also ordered that Mr. Hershey's deposition be scheduled and taken. The Court advised that the undersigned could renew the motion to withdraw after the Hershey deposition was completed.

4. The undersigned can now inform the Court that Mr. Hershey's deposition took

place earlier today. He testified for slightly in excess of the maximum of six hours permitted by Colorado Rule of Civil Procedure 30(d)(2)(A). As such, the predicate for this renewed motion has been satisfied, and, as noted, *supra*., this Court has already advised Mr. Hershey specifically that the trial of this matter, commencing on 23 October 2023, will not be moved. Accordingly, both of Plaintiff's objections to withdrawal by the undersigned have been taken care of.

4. Certification: In conformity with C.R.C.P 121 § 1-15(8), the undersigned have conferred via email with counsel for Plaintiffs and with counsel for the other Defendants. Defendants' counsel previously informed the undersigned that their clients do not object to this Motion. Plaintiff's counsel Mr. Gilbert stated in a 23 June 2023 to the undersigned that "We have no objection to your renewed withdrawal motion after Mr. Hershey's deposition is completed." As stated above, that occurred earlier today. For his part, Mr. Hershey said at the 15 June 2023 hearing before this Court that while he would prefer for his lawyers not to withdraw, he understood why they needed to do so (*i.e.*, that they were not getting paid).

5. The undersigned have complied with the notification requirements of Colorado Rule of Civil Procedure121 § 1-1(2)(b) as reflected in the attached written notification certificate, which is incorporated herein.

WHEREFORE, the Hershey Defendants' counsel respectfully request that this Motion be granted.

Dated this 27th day of June 2023.

Respectfully Submitted,

S/Thomas E. Goodreid
Thomas E. Goodreid

S/Paul M. Grant
Paul M. Grant

CERTIFICATE OF ELECTRONIC FILING

Pursuant to Colorado Rule of Civil Procedure 121 sec. 1-26(7), I hereby certify that a printed or printable copy of this **RENEWED MOTION (UNOPPOSED) TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS** (with original signatures) and accompanying notification certificate and proposed order, which were e-filed, are maintained by my office and is available for inspection by other parties or the Court upon request.

S/Thomas E. Goodreid
Thomas E. Goodreid

CERTIFICATE OF ADDITIONAL SERVICE

I hereby certify that on this 27th day of June 2023, I e-mailed a true and correct copy of this **RENEWED MOTION (UNOPPOSED) TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS** and accompanying notification certificate and proposed order to:

Marlin Hershey
marlin@performanceholdings.com

Performance Holdings, Inc.
dana@performanceholdings.com

S/Thomas E. Goodreid
Thomas E. Goodreid

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202	DADATETEFIFILEDLED: June July 24, 27, 202021 3:04 4:11 PM FIFILINGLING ID: 14678D9409116E400 CACASESE NUMBER: 2020CV30255
Plaintiffs: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC vs. Defendants: GARY DRAGUL; BENJAMIN KAHN; THE CONUNDRUM GROUP, LLP; SUSAN MARKUSCH; ALAN C. FOX; ACF PROPERTY MANAGEMENT, INC.; MARLIN S. HERSHEY; PERFORMANCE HOLDINGS, INC.; OLSON REAL ESTATE SERVICES, LLC; JUNIPER CONSULTING GROUP, LLC; JOHN AND JANE DOES 1-10; and XYZ CORPORATIONS 1-10	**▲COURT USE ONLY ▲** Case Number: 20CV30255 Courtroom: 414
Counsel for Defendants Performance Holdings, Inc. and Marlin Hershey Thomas E. Goodreid, #25281 Paul M. Grant, #26517 Goodreid & Grant LLC 1801 Broadway, Suite 1400 Denver, Colorado 80202 Phone: 303-296-2048x136 (Goodreid) Phone: 720-810-4235 (Grant) E-mail: *t.goodreid@comcast.net* E-mail: *pgrant@goodreidgrant.com*	

SECOND RENEWED MOTION TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS

Thomas E. Goodreid and Paul M. Grant, counsel for Defendants Performance Holdings, Inc. ("PHI") and Marlin Hershey (collectively the "Hershey Defendants"), pursuant to C.R.C.P. 121 § 1-1(2)(b), again request an Order permitting their withdrawal, stating that nothing has changed since the filing of the Renewed Motion to Withdraw on 27 June 2023 except that the undersigned have provided additional uncompensated legal services to the Hershey Defendants, contrary to the express terms of the fee agreement between counsel and clients. Counsel are not aware of any objections to this second renewed motion by anyone other than potentially Mr. Hershey.[1] The notification requirements of Colorado Rule of Civil Procedure 121 § 1-1(2)(b) previously given to the Hershey Defendants are incorporated by reference herein and via service of this Motion on Mr. Hershey are deemed given to him again.

WHEREFORE, the Hershey Defendants' counsel respectfully request that this Motion be granted.

Dated this 27th day of July 2023.

Respectfully Submitted,

S/Thomas E. Goodreid
Thomas E. Goodreid

S/Paul M. Grant
Paul M. Grant

[1] Mr. Hershey, by the way, completed the eighth, and presumably final, hour of his deposition earlier today.

CERTIFICATE OF ELECTRONIC FILING

Pursuant to Colorado Rule of Civil Procedure 121 sec. 1-26(7), I hereby certify that a printed or printable copy of this **SECOND RENEWED MOTION TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS** (with original signatures) and accompanying notification certificate and proposed order, which were e-filed, are maintained by my office and is available for inspection by other parties or the Court upon request.

S/Thomas E. Goodreid
Thomas E. Goodreid

CERTIFICATE OF ADDITIONAL SERVICE

I hereby certify that on this 27th day of July 2023, I e-mailed a true and correct copy of this **SECOND RENEWED MOTION (UNOPPOSED) TO WITHDRAW AS COUNSEL FOR THE HERSHEY DEFENDANTS** and accompanying notification certificate and proposed order to:

Marlin Hershey
marlin@performanceholdings.com

Performance Holdings, Inc.
dana@performanceholdings.com

S/Thomas E. Goodreid
Thomas E. Goodreid

Minute Orders

Case Number: 2020CV030255
Case Type: Fraud
Case Caption: Harvey Sender As Receiver For Gary Drag v. Dragul, Gary J et al

Division: 414
Judicial Officer: Andrew J Luxen
Court Location: Denver County - District

DATE FILED: June 24, 2024 10:11 PM
FILING ID: 468ED9D091154
CASE NUMBER: 2018CV33011

Appellate Case Number: 2021CA483 - Court of Appeals
2024CA183 - Court of Appeals

Order Date: 10/30/2023

JUDGE ANDREW J LUXEN FTR 8:08 AM JTRL DAY 1 APPEARS IN-PERSON: PLTF W/ ATTYS, PATRICK VELLONE & AVERIL ANDREWS; DEF MARLIN HERSHEY, PRO SE. DEF PERFORMANCE HOLDINGS, INC. DOES NOT APPEAR AND IS UNREPRESENTED. COURT AND PARTIES DISCUSS PRE-TRIAL MATTERS OUTSIDE PRESENCE OF JURY. COURT DENIES DEF HERSHEYS ORAL MOTION TO ENFORCE SETTLEMENT AGREEMENT. COURT GRANTS ORAL MOTION IN LIMINE TO PRECLUDE EVIDENCE OF SETTLEMENT OFFERS AND NEGOTIATIONS. COURT HAS ENTERED ORDER FOR SEQUESTRATION. COURT DENIES DEF HERSHEYS REQUEST TO SEAL JURY TRIAL. COURT DENIES DEF HERSHEYS MOTION IN LIMINE RE STATUTE OF LIMITATIONS. COURT DENIES DEF HERSHEYS MOTION TO RECONSIDER RULE 43 MOTION AS TO TWO OF DEF HERSHEYS WITNESSES. COURT DENIES DEF HERSHEYS 702 MOTION. COURT ORDERS DEF HERSHEY TO FORMALLY FILE HIS FILING IN 256 FOR THE RECORD. COURT AND PARTIES CONTINUE TO DISCUSS PRE-TRIAL MATTERS. ***RECESS AND COURT RECONVENES FTR AT 10:02 A.M.*** VOIR DIRE. PARTIES CONDUCT PEREMPTORY CHALLENGES BY PAPER. JURY SELECTED AND SWORN. ***RECESS AND COURT RECONVENES FTR AT 1:54 P.M..*** COURT GIVES INTRODUCTORY REMARKS TO JURY. OPENING STATEMENTS. PLTF CALLS WITNESSES. ***RECESS AND COURT RECONVENES FTR AT 3:40 P.M..*** DEF CROSS EXAMINATION. PLTF REDIRECT. COURT ASKS JUROR QUESTIONS. PLTF CALLS WITNESSES. JUROR QUES NOS. 1(A); 1(B); 2; SUBMITTED AND ASKED. COURT ADMONISHES JURY AND RELEASE THEM FOR THE DAY TO RETURN ON OCTOBER 31, 2023 AT 8:30 A.M. ***RECESS AND COURT RECONVENES FTR AT 5:10 P.M..*** DEF TO INFORM COURT TOMORROW, OCTOBER 31, 2023, AS TO WHETHER HE HAS PROPOSED JURY INSTRUCTIONS. PARTIES TO CONFER ABOUT WITNESS ORDER. /SMF

EXHIBIT C