

<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 October 31, 2024 3:31 PM FILING ID: B587A38A2C33D 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><b>RECEIVER’S OBJECTION TO CHAD HURST’S MOTION TO CONTINUE HEARING</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 objects to Chad Hurst’s Motion to Continue Hearing on the Receiver’s Motion to Approve Settlement Agreement with the Clearwater Bankruptcy Estates (“**Motion to Continue**,” filed October 30, 2024).

1. The Receiver filed his Motion to Approve Settlement Agreement with the Clearwater Bankruptcy Estates on March 29, 2024, more than 7 months ago. Hurst filed his Objection to that Motion on April 16, 2024 (“**Hurst Objection**”). On May 10, 2024, over five and a half months ago, the matter was set for hearing on November 13. Yet Hurst waited for more than five months to seek a continuance of at least three months and possibly more.

2. The Clearwater settlement resolves over \$10 million in claims the Receiver filed in the Clearwater bankruptcy cases (Case Nos. 22-11320-JGR, and 22-11321-JGR, in the Bankruptcy Court in and for the District of Colorado). Those cases have been pending for two and a half years. If approved, the Clearwater settlement agreement will bring an additional \$500,000 into the Receivership Estate, reduce claims against the Receivership Estate, and result in increased distributions to Receivership Estate creditors. Resolving the Clearwater settlement agreement is the sole impediment to closing the Clearwater bankruptcy cases and the primary impediment to closing this Receivership case.

3. Hurst is the only creditor that has objected to the Clearwater settlement in either the bankruptcy cases or in this Receivership case, whereas joinders in the motion to approve have been filed by other creditors in the Bankruptcy Cases, including Lone Pine Resources, LP, which also filed a joinder in this Court on

May 16, 2024, in support of the Receiver's Motion to Approve the Clearwater Settlement Agreement.<sup>1</sup>

4. Hurst objects to the settlement agreement because under the distribution plan proposed by the Liquidating Trustee (attached to the settlement agreement), Hurst is not slated to receive distributions based upon Dragul's purported assignment of his claimed equity holdings in Clearwater in order to circumvent this Court's Receivership Order, which precludes distributions to Dragul or insiders without an order of this Court.

5. The primary basis for Hurst's objection to approving the settlement agreement is that the Receiver abandoned the Receivership Estate's interest in the two Clearwater entities in bankruptcy (Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC), as set forth in two of this Court's Orders: (a) March 3, 2020, Order: Receiver's Motion to Abandon Clearwater Collection; and (b) April 15, 2020, Order: Defendant Gary Dragul's Motion for Clarification of Order Appointing Receiver and Orders Authorizing Abandonment (together, the **Abandonment Orders**"). Hurst argues these Abandonment Orders barred the Receiver from filing claims in the Clearwater bankruptcy cases, and therefore the settlement agreement should not be approved even though it brings an additional \$500,000 into the Receivership Estate. *See* Hurst Objection at 1-8. But the Receiver's claims in the Clearwater cases are not based on an equity claim; they are based on

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<sup>1</sup> Notwithstanding Lone Pine's joinder, Hurst failed to serve Lone Pine with his Motion to Continue.

claims filed in the Receivership by defrauded Clearwater investors, and to recover fraudulent transfers Dragul made to the Clearwater entities before the Receiver was appointed.

6. Hurst has also objected to the proposed settlement agreement in the Clearwater bankruptcy cases. His primary objection there is also that the Receiver's Clearwater bankruptcy claims are barred by this Court's Abandonment Orders. Briefing on this issue (*i.e.*, the scope and effect of this Court's Abandonment Orders) was completed in the Bankruptcy Court on August 29, 2024. Although briefing was completed over two months ago, Hurst inexplicably waited until the eve of this Court's November 13th hearing to seek a continuance.

7. As set forth in the Receiver's filings in the Bankruptcy Court, the scope and effect of this Court's Abandonment Orders should be decided by *this* Court, not the Bankruptcy Court. *See* Receiver's Brief on Standing at 10 (attached as Exhibit B to the Motion to Continue). The Bankruptcy Court has been informed that this issue will be heard by this Court on November 13 (*id.*), and the Bankruptcy Court has not ruled on the issue nor set a hearing on it, presumably because it awaits this Court determination as to the scope and effect of its own Orders.

8. Transparently forum shopping, Hurst asks this Court to vacate the November 13th hearing date for at least three months (and perhaps *indefinitely*) until the Bankruptcy Court rules on the scope and effect of the Abandonment Orders, which is properly within the purview of *this* Court. With no basis whatsoever, Hurst argues the Bankruptcy Court is likely to rule on the issue before this Court does.

Hurst Objection ¶ 13. There is no hearing scheduled in the Bankruptcy Court on this issue, whereas the issue is set for hearing before this Court in less than two weeks.

9. Hurst speculates “it does not appear [the Receiver] would suffer any prejudice from continuing the hearing.” To the contrary, the Receiver and his counsel have already spent significant time preparing for the hearing, which was the first half-day hearing date available on this Court’s docket when the matter was set over five and a half months ago. This Receivership Case has been pending for more than six years. The Receiver has prepared a proposed distribution plan for the Receivership Estate. There are only two pending matters that are delaying the filing of that plan and making distributions to creditors: (1) approval of the Clearwater settlement agreement; and (2) Dragul’s settlement payment of \$850,000, which was due October 25, 2024.<sup>2</sup> Thus, not only will the Receiver be prejudiced by the unwarranted delay, but the creditors of both the Receivership Estate and the bankruptcy cases will be as well, all of whom are anxious to wrap these cases up and receive distributions.

10. This Court’s decision on the scope and effect of its Abandonment Orders will bind the Bankruptcy Court and resolve the primary objection to the settlement agreement in both this case and the bankruptcy cases. If the Bankruptcy Court approves the settlement agreement, this Court must still address Hurst’s Objection, which could potentially result in inconsistent rulings and waste judicial resources.

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<sup>2</sup> Dragul failed to make that payment and has not responded to the Receiver’s notice of default. Dragul has 30-days to cure. If he fails to do so, judgment will enter against him for \$999,999.99.

Alternatively, if this Court concludes its Abandonment Orders bar the Receiver's claims in the bankruptcy cases, that would definitively resolve the matter in both this case and the bankruptcy cases. Delaying this matter indefinitely while Hurst forum shops will further delay distributions to creditors and the long-overdue closing of this estate and the Clearwater bankruptcy estates.

WHEREFORE, the Receiver asks the Court to deny Hurst's Motion to Continue.

Dated: October 31, 2024.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.



By: s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER, HARVEY  
SENDER

**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2024, I served a true and correct copy of the foregoing **RECEIVER’S OBJECTION TO CHAD HURST’S MOTION TO CONTINUE HEARING** via CCE to:

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