

DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202 (303) 606-2300	DATE FILED: November 6, 2023 CASE NUMBER: 2020CV30255
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC  v.  Defendants: MARLIN HERSHEY AND PERFORMANCE HOLDINGS, INC.	<b>▲ COURT USE ONLY ▲</b>  Case Number: 2020CV30255  Div.: 414
<b>VERDICT FORM</b>	

You are instructed to provide answers below. You must apply the law in the instructions that the Court gave you to the facts that were proved by the evidence. You must all agree on your answer in each section, and you must all sign the completed form on the signature lines.

**I. COLORADO SECURITIES ACT CLAIMS**

**1. Defendant Marlin Hershey**

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Substantial Assistance under the Colorado Securities Act against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ \_\_\_\_\_.

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on Plaintiff's claim for Substantial Assistance under the Colorado Securities Act.

**2. Defendant Performance Holdings**

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Securities Fraud and/or Substantial Assistance under the Colorado Securities Act:

Damages \$ 0.00.

## II. NEGLIGENCE CLAIMS

### 1. Defendant Marlin Hershey

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Negligence against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ 1,760,000.<sup>00</sup>

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on Plaintiff's claim for Negligence.

### 2. Defendant Performance Holdings

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Negligence:

Damages \$ 1,760,000.<sup>00</sup>

### III. NEGLIGENT MISREPRESENTATION CLAIMS

#### 1. Defendant Marlin Hershey

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Negligent Misrepresentation against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ 200,000.<sup>00</sup>

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on Plaintiff's claim for Negligent Misrepresentation.

#### 2. Defendant Performance Holdings, Inc.

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS, INC. on Plaintiff's claim for Negligent Misrepresentation:

Damages \$ 200,000.<sup>00</sup>

**IV. CIVIL THEFT CLAIMS**

**1. Defendant Marlin Hershey**

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Civil Theft against Defendant MARLIN HERSHEY and award the following damages:

**Damages \$** \_\_\_\_\_.

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on Plaintiff's claim for Civil Theft.

**2. Defendant Performance Holdings**

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Civil Theft:

**Damages \$** \_\_\_\_\_ 0.00

**V. COLORADO ORGANIZED CRIME CONTROL ACT ("COCCA")**

**1. Defendant Marlin Hershey**

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff Harvey Sender as Receiver on his claim for Violations of COCCA against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ 1,760,000.<sup>00</sup>

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on the Plaintiff's claim for Violations of COCCA.

**2. Defendant Performance Holdings**

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Violations of COCCA:

Damages \$ 1,760,000.<sup>00</sup>

**VI. AIDING AND ABETTING VIOLATIONS OF COCCA**

**1. Defendant Marlin Hershey**

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Aiding and Abetting Violations of COCCA against Defendant MARLIN HERSHEY and award the following damages:

**Damages \$** \_\_\_\_\_.

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on the Plaintiff's claim for Aiding and Abetting Violations of COCCA.

**2. Defendant Performance Holdings**

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Aiding and Abetting Violations of COCCA:

**Damages \$** \_\_\_\_\_ 0.00

## VII. FRAUDULENT TRANSFER

### 1. Defendant Marlin Hershey

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

**Part A.** We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Fraudulent Transfer against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ 0.00

**Part B.** We, the jurors, find in favor of Defendant MARLIN HERSHEY on the Plaintiff's claim for Fraudulent Transfer.

### 2. Defendant Performance Holdings

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Fraudulent Transfer:

Damages \$ 764,846.00



VIII. UNJUST ENRICHMENT

1. Defendant Marlin Hershey

You are to check either Part A. or Part B. of this Verdict Form, but not both, as to Defendant Marlin Hershey.

Part A. We, the jurors, find in favor of Plaintiff, Harvey Sender as Receiver, on his claim for Unjust Enrichment against Defendant MARLIN HERSHEY and award the following damages:

Damages \$ 1,529,692.<sup>00</sup>

Part B. We, the jurors, find in favor of Defendant MARLIN HERSHEY on the Receiver's claim for Unjust Enrichment.

2. Performance Holdings

Defendant Performance Holdings has already been found liable for this claim. You are to state the total amount of Plaintiff's damages, if any, with respect to this claim.

We, the jurors, award the following damages against Defendant PERFORMANCE HOLDINGS on Plaintiff's claim for Unjust Enrichment:

Damages \$ 1,529,692.<sup>00</sup>

Signatures of all jurors:

  
Foreperson









